# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 162.

HENRY W. FULLER AND ISAAC W. BARNUM, APPELLANTS,

vs.

HERMAN B. GOODRICH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

**FILED OCTOBER 15, 1874.**

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1 Pleas in the circuit court of the United States for the northern district of Illinois, begun and held at the United States court-rooms in the city of Chicago, on Monday, the sixth day of July, in the year of our Lord one thousand eight hundred and seventy-four, before the Hon. Thomas Drummond, circuit judge, and on Saturday, the fifth day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth year.

WM. H. BRADLEY, *Clerk.*

HENRY W. FULLER AND ISAAC W. BARNUM
*v.*
HERMAN B. GOODRICH. } Chancery.

Be it remembered that on the twenty-fourth day of June, one thousand eight hundred and seventy-two, the plaintiff, by his solicitors, came and filed in the office of the clerk of said court his bill of complaint against said defendant, together with a stipulation whereby the defendants waive the issuance and service of process, and enter their appearance herein; which said bill of complaint and stipulation read in the words and figures following, to wit:

2 Circuit court of the United States for the northern district of Illinois. In equity. For infringement of patent, &c.

To the judges of the circuit court of the United States for the northern district of Illinois:

Henry W. Fuller, of the city, county, and State of New York, and a citizen of said State, brings this his bill of complaint against Herman B. Goodrich, residing at the city of Chicago, county of Cook, & State of Illinois, & a citizen of said last-mentioned State.

And thereupon your orator, humbly complaining, shows unto your honors that heretofore, and before the 22d day of September, 1863, one Israel M. Rose invented a certain new and useful improvement in mechanism for marking cloth in sewing-machines, whereof he was the original and first inventor, and which had not been known or used by others before his said invention of the same, and had not been in public use for more than two years before his application for letters-patent therefor, nor had the same been on sale with his consent or allowance as such inventor prior to his said application for letters-patent therefor, as hereinafter mentioned; and that being such inventor as aforesaid, and desirous of obtaining an exclusive property in the said invention, he afterwards made application in writing to the Commissioner of Patents of the United States for such letters-patent, expressing such desire as aforesaid, pursuant to the acts of Congress of the United States in such case made and provided, and complied in all other respects with the requirements of said acts.

And the said invention having been assigned to one James Willcox by the said Israel M. Rose, letters-patent were thereupon issued to the said James Willcox, under the seal of the Patent-Office of the United States, signed by the Secretary of the Interior, and countersigned by the said Commissioner in due form of law, bearing date the day and year aforesaid, whereby there were granted him, the said James Willcox, his heirs, administrators, and assigns, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used,

the said improvement and invention; a description and specification whereof are given in the words of the said Israel M. Rose in the schedule annexed to the said letters-patent and the designs accompanying the same, and made a part thereof, as by reference to the said letters-patent now in the possession of your orator, ready to be produced as your honors may direct, will more fully and at large appear, and to which for greater certainty he prays leave to refer.

And your orator further shows unto your honors that afterwards, and before the 1st day of December, in the year one thousand eight hundred and sixty-eight, by and through divers mesne assignments, the said letters-patent and the right and liberty thereby secured became and were the property of your orator as the owner and holder thereof.

And your orator further shows unto your honors that in the original letters-patent, so issued to the said James Willcox as aforesaid, errors in the specification of the said invention were incorporated, by reason whereof the said letters-patent were inoperative to secure to the owner thereof the benefits and advantages of the said invention; which said errors arose from inadvertency, accident, or mistake, and without any fraudulent or deceptive intention on the part of the said Israel M. Rose, and that therefore your orator, being such owner of the said letters-patent, and of the invention and improvement secured or intended to be secured thereby as aforesaid, surrendered the said letters-patent to the said Commissioner of Patents, and prayed a re-issue of the same upon an amended specification. And thereupon such proceedings were had that the said letters-patent were canceled and other letters-patent were issued as aforesaid, in due form of law, bearing date on the 1st day of December, 1868, upon the said amended specification for the same invention, a description whereof is given in the schedule thereto annexed and the drawings accompanying the same, and made a part thereof, as by reference to the said re-issued letters-patent, now in the possession of your orator, ready to be produced as your honors may direct, will more fully and at large appear, and to which for greater certainty he prays leave to refer.

And your orator further shows unto your honors that your orator and the said Rose and Willcox, after the re-issuing and delivery of the said original letters-patent, put the said invention and improvement into use, and with great labor and at great expense created a demand for the same in the market, and they and your orator have from time to time manufactured and sold large numbers of said improvements, to wit, the number of twenty thousand and upwards; and that he and your orator have, since the issue of said original and re-issued letters-patent, until as hereinafter mentioned, uninterruptedly enjoyed the exclusive right and liberty thereby granted, and their exclusive right and liberty thereunder has been fully admitted, and recognized, and allowed by the public and the trade generally, and that your orator is now the exclusive owner and possessor of the same.

And your orator further shows unto your honors that the said defendant, before and ever since the 1st day of May, 1872, has been engaged in the manufacture and sale at the city of Chicago, and within the jurisdiction of this court and elsewhere, of large numbers of said improvements called tuckers, or tuck-markers, or creasers, to wit, ten thousand, substantially similar to and embodying the said invention and improvement described and specified in and by the said re-issued letters-patent and the schedule and drawings accompanying the same and made a part thereof and secured thereby, in violation and infring'ment of the said re issued letters-patent, and the full and exclusive right and liberty of and

in the said invention and improvement secured thereby, and that he is now making and constructing, or causing to be made and constructed, divers, to wit, ten thousand, improvements called tuckers, or tuck-markers, or creasers, substantially similar to and embodying the said invention and improvement so secured as aforesaid; and although your orator has requested the said defendant to desist from such violation and infringement, the said defendant persists therein, and threatens and intends to continue said manufacture and sale of said improve-
3 ments, at said city of Chicago and elsewhere, in violation and infringement of the said re-issued letters-patent, and the said right and liberty of and in the said invention and improvement, contrary to equity and good conscience, and to the manifest wrong and injury of your orator, and to his damage twenty thousand dollars.

In consideration whereof, and forasmuch as your orator can have adequate relief only in this court, where matters of this sort are properly cognizable and relievable, and to the end, therefore, that the said defendants may, upon his oaths and to the best of his knowledge, information, and belief, direct, true, and perfect answer make to all the matters and things hereinbefore set forth, and that as fully and particularly as if the same were here again repeated and he particularly interrogated thereto; and that he may be enjoined and restrained by a writ of injunction, issued out of and under the seal of this court, from making, constructing, or causing to be made or constructed, using, or vending to others to be used, any such improvements, such as he is now making and vending, as hereinbefore set forth, or such as are precisely or substantially similar to or embody the said invention and improvement so secured by said letters-patent as aforesaid, and owned by your orator as aforesaid, and that he may be decreed to pay the damages aforesaid, and account for and pay over to your orator the gains and profits by him made by the use and sale of said improvements as aforesaid, and to deliver up and cause to be destroyed all dies and tools used specially for such manufacture aforesaid.

And that your orator may have such other and further relief as may be consistent with equity and good conscience.

May it please your honors, the premises considered, to grant to your orator, not only a writ of injunction, issuing out of and under seal of this court, enjoining and restraining the said defendant from making, constructing, causing to be made or constructed, using, or vending to others to be used, any such improvements as he is now manufacturing and selling as aforesaid, or such as are precisely or substantially similar to or embody the said invention and improvements of your orator, so secured as aforesaid, but also a writ of subpœna, issued out of and under seal of this court, commanding him to appear at a certain time and place in this court, to answer the premises and to stand to and abide such orders and decrees herein as may be consistent with equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

HENRY W. FULLER.

GEO. HARDING, E. B. BARNUM, & CHAS. C. BONNEY,
*Solicitors and of Counsel for Complainant.*

UNITED STATES OF AMERICA,
*Northern District of New York, ss:*

Henry W. Fuller, the complainant in the foregoing bill of complaint named, being duly sworn, says that the matters and things set forth in the said bill, so far as they relate to his own acts and deeds, are true,

and so far as they relate to the acts and deeds of any other person or persons, he believes them to be true. And that he verily believes that he is the original and first inventor of the improvements mentioned and described in the letters-patent mentioned and referred to in the said bill of complaint.

HENRY W. FULLER.

Subscribed and sworn to before me this 7th day of June, 1872.
[SEAL.] E. B. BARNUM,
*Notary Public, N. Y. C.*

4 The defendant in the foregoing bill hereby enters his appearance in this cause and waives the issuing and service of process; the complainant thereupon enters his motion for a preliminary injunction, as prayed for in said bill, and asks that said motion be set for hearing on the 10th day of July next; and hereupon the said defendant enters his cross-motion to extend the time for such hearing till some further day, to be fixed by the court; which motion and cross-motion are taken under advisement, the court intimating a disposition to extend the time for hearing said motion until about the first of August next.
June 24th, 1872.

CHARLES C. BONNEY,
*Sol. & Coun. for Complt.*
WALTER B. SCATES,
*Solicitor for Deft.*

(Endorsed:) Filed June 24, 1872. Wm. H. Bradley, clk.

And afterwards, to wit, on the twenty-fourth day of June, one thousand eight hundred and seventy-two, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } Chancery.

5 Now comes the complainant, by C. C. Bonney, esq., his solicitor, and files his bill and affidavits, and moves the court for an injunction against the defendant as prayed for in said bill, and that the hearing of said motion be set for the tenth day of July next; and now comes the defendant, by Walter B. Scates, esq., his solicitor, and waives service of process and enters his appearance herein, and makes his cross-motion to postpone the time for such hearing until some further day, to be named by the court; and after hearing the arguments of counsel the court takes the same under advisement.

And afterwards, to wit, on the second day of August, one thousand eight hundred and seventy-two, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } Bill.

Now comes the complainant, by his solicitors, and on motion, the defendants are ruled to file their affidavits as to the merits of their defence on or before the fifteenth day of August next.

And afterwards, to wit, on the third day of August, one thousand eight hundred and seventy-two, in the record of the proceedings
6 of said court in said cause is the following entry, to wit:

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } Bill.

Now comes the complainant, by his solicitors, and thereupon, on his motion and by agreement, this cause is set down for hearing upon the motion heretofore made to grant a preliminary injunction on Tuesday the first day of October next.

And afterwards, to wit, on the first day of October, one thousand eight hundred and seventy-two, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the application of the complainant for an injunction against the defendant, as prayed for in the bill herein; and after hearing the arguments of counsel the court, not being sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on the first day of October, one thousand eight hundred and seventy-two, the said defendant, by his solicit-
7 ors, comes and files his answer herein, which reads in the words and figures following, to wit:

United States circuit court for the northern district of Illinois.

HENRY W. FULLER
*vs.*
HERMAN B. GOODRICH. } In chancery.

The answer of Herman B. Goodrich to the bill of complaint of Henry W. Fuller.

1. This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and imperfections of the said complainant's said bill of complaint, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, admits, upon information and belief, that Israel M. Rose was a citizen of the United States on and prior to the 22d day of September, A. D. 1863, and that he claimed to be the original and first inventor of a new and useful improvement in mechanism in tucking device for sewing-machines.

2. This defendant, further answering upon information and belief, admits that said Rose so claiming to be the original and first in-
8 ventor as aforesaid, did, on or about the said 22d September, 1863, make application to the Commissioner of Patents in due

form for letters-patent therefor; and upon like information and belief defendant further admits that said pretended invention having been assigned by said Rose to James Willcox, letters-patent therefor were granted and issued to said Willcox, on said 22d day of September, 1863.

This defendant, further answering upon information and belief, admits that said letters-patent by mesne assignments became the property of said complainant.

3. This defendant, further answering, states that he has no knowledge and no information, other than that stated in said bill of complaint, and therefore has no belief, and cannot and does not admit, that in the said original letters-patent to said James Willcox errors in the specifications of the said supposed invention were incorporated, by reason whereof the said letters-patent were inoperative to secure to the owner thereof the benefits and advantages of the said supposed invention, nor does this defendant admit that said supposed errors, if any existed or were made, arose from inadvertency, accident, or mistake, and without fraudulent or deceptive intention on the part of said Rose; and this defendant therefore calls upon the said complainant for proofs of all these allegations in such way as he may be advised and as the law may require.

9 4. And this defendant asks this hon. court to require and order the said complainant to produce in court, for the examination and inspection of this defendant, duly certified copies of all the petitions, specifications, files, and correspondence in relation thereto, and of the decisions of the Department in relation to the original patent and in relation to the re-issue of the same to said complainant on the first day of December, 1868, or at any other time or times.

5. And this defendant, further answering upon information and belief, admits that said complainant surrendered said original letters-patent to said Willcox, and that they were cancelled; and that thereupon such proceedings were had that letters-patent were re-issued to said complainant on the first day of December, 1868, upon amended specifications and claims made therein by said complainant.

6. But this defendant wholly denies that said amended specifications and claims included in and made part of said re-issued letters-patent were authorized or warranted by the said supposed invention, or by the alleged inadvertency, accident, or mistakes in making the original specifications and claims for and under said original patent.

7. But on the contrary thereof, this defendant, further answering upon the advice of counsel, and upon information and belief, avers
10 and charges the fact to be that both of said letters-patent, original and re-issue, are and were null and void in law, for the following amongst other reasons, that is to say:

8. First. The original patent is for an improvement for tucking device for sewing-machines, and said re-issued patent is for improvement in tuck-creasing attachment for sewing-machines, and said letters-patent nowhere set forth or distinguish what is and what was in the former tuck-markers, or in common use, and what the invention claimed therein as newly invented; but the whole is set forth and described and claimed as new.

9. Whereas in claim 2nd of the original patent, and in claim 4th in said re-issue, claims are set forth and made for a principle embodied in common pincers, nippers, and pliers, worked and operated by means of a pivot, rivet, and jointed levers, and which were known to the art and to artisans, and in common use by artisans and the general public for

more than a century prior to the said letters-patent, in the cities of New York and Boston, in the United States.

10. Second. In the 2nd claim of said re-issued letters-patent, claim is made for and of a method for nipping and pinching by means of jaws opened and closed at intervals; whereas this defendant avers and insists that a method is not patentable, (1 Story Rep., 274, 4 McLean
11 Rep., 177,) nor is nipping and pinching by means of jaws opened and closed at intervals, this method by these means being known and in common use as aforesaid, and the re-issued patent is therefore void in law.

11. Third. The 6th, 7th, and 8th claims in said re-issued letters-patent set forth, describe, and claim principles and mechanical devices embodied in and described in patents granted and issued to Calvin D. Wheeler, February 14th, 1860, and Henry W. Fuller, the complainant, and one Anthony W. Goodell, on June 5th, 1860, as more particularly hereinafter set forth and shown, and which said principles and mechanical devices were all well known to the art and to artisans, and to Geo. L. Chapin, Edwin J. Cubley, & Norman H. Sherburne, William H. Bradley, Charles B. Farwell, Philip A. Hoyne, William L. Church, George A. Bower, and Samuel D. Childs, jr., of the city of Chicago, Cook County, Illinois, and were in common public use more than ten years prior to said original and re-issued letters-patent to said James Willcox and said complainant, in said city of Chicago and in the State of Illinois.

12. This defendant, further answering upon information and belief, denies the validity of said complainant's said letters-patent, and he avers, charges, and states the fact to be that, prior to the date of said original and re-issued patents, all the material elements and
12 principles set forth, described, and contained in the specifications drawing, and model, and in said patents and in the mechanism or mechanical device therein and thereunder claimed, had been and was in public use, and substantially embodied in various and sundry mechanisms and mechanical devices and many material and substantial parts of said complainant's device was and were in common public use in various and sundry other devices then and more than ten years before used for various and sundry purposes by artizens and others in manufacturing, and also for common purposes, domestic and commercial, namely: pincers with serrated jaws; nippers and pliers worked and operated by two jointed levers, and in use by blacksmiths, shoemakers, tinkers, stovemakers, silversmiths, and other manufacturers and mechanics; springs and other levers, spiral, curved, and straight in form, and used in and for lifting the upper marker or seal from the lower marker or die or countersink, and in use by secretaries of state, of railroad companies, manufacturing and other corporations, clerks of courts, notaries public, and other public and private officers and persons using seals; and the common and public use of which as aforesaid is and was known to the said Geo. L. Chapin, Edwin J. Cubley, Norman H. Sherburne, William H. Bradley, Charles B. Farwell, William L. Church, George A. Bowers, Philip A. Hoyne, Samuel D. Childs, jr., J. S.
13 Hamilton, residents of the city of Chicago, Cook County, Illinois, and to Eugene McKay and Thos. J. Noyes, residents of the village of Evanston, of the same county and State, and to the said complainant and divers other persons too numerous to mention, and the same were so used in the cities of Chicago, New York, Philadelphia, Baltimore, St. Louis, Cincinnati, and New Orleans.

13. This defendant, further answering upon information and belief, avers and states that on the 14th day of February, 1860, letters-patent

of the United States were duly granted and issued to one Calvin D. Wheeler, a citizen and resident of the city, county, and State of New York, for an improvement in sewing-machine attachments, wherein was described and embodied all the material and substantial elements and principles and mechanical device' for marking or creasing cloth for tucks, as in the device of complainant, consisting of and by means of two markers on opposite sides of the cloth or material to be marked, and also of a bed-plate and a spring for lifting one of said markers from the material; and also of a connection of said bed-plate and spring in combination, and with a guide and scale for measuring the width of tucks, all in combination and adjustable together as a whole for width of tucks, and also of the mode of attaching the same to a sewing-machine, and of adjusting the same thereon with relation to the
14 width of tucks substantially as is described and embodied in the said complainant's said patent device, except in forms of the particular mechanism, in its parts and as a whole.

14. And this defendant, further answering upon information and belief, avers and states that on the 5th day of June, 1860, letters-patent of the United States were duly granted and issued to the said complainant, Henry W. Fuller, and one Anthony W. Goodell, citizens and residents of the city of New York, for an improvement in mechanism for marking cloth in sewing-machines, wherein was described and embodied all the material and substantial elements and principles as are contained and set forth and described in said Wheeler's patent, hereinbefore and last above described, and as the same were and are described and set forth in the said original patent to said James Willcox, and in the said re-issue thereof to complainant as aforesaid, and embodied in the said last-mentioned device of complainant's re-issued patent, excepting as to the form of the several parts, and as a whole, of said last-mentioned device; and excepting further, in relation to the adjustability of said Fuller and Goodell device, that the marking parts for width of tucks were adjustable as a whole, and the parts also separately; and defendant further avers, upon information and belief, that these devices, respect-
15 ively, were known to the said Calvin D. Wheeler and said complainant, both residents of the city of New York aforesaid.

15. This defendant, further answering, admits that he has been and still is engaged in having manufactured by others, and in selling before and ever since the time charged in complainant's bill, tuckers, tuck-markers, or creasers, but defendant does not admit that he has manufactured any such tuckers himself, or any such quantity as charged; and he wholly and expressly denies that the tuckers or creasing device which is manufactured by him, and which he is selling for use, and within the jurisdiction of this court, is or are substantially like or similar to or embody the said supposed invention and improvement described and specified in said complainant's said letters-patent.

16. But this defendant, on the contrary thereof, avers and states and insists that on the 2nd day of January, A. D. 1872, letters-patent of the United States were duly granted and issued to this defendant for an improvement in tuck markers or creasers for sewing-machines. And this defendant, further answering, avers and states that all the tuckers, tuck-markers, or creasers heretofore manufactured for him, and now being manufactured for him, were and are so manufactured under
16 said letters-patent to him, and in conformity therewith and the rights therein thereby and thereunder acquired by and secured to him, and which in no respect infringes upon or violates the rights of said complainant, and copies of which said letters-patent, specifications,

and drawings this defendant is ready to produce to this hon. court as and when required.

17. And this defendant, further answering, expressly denies that he has, or intends now or hereafter, or ever has infringed, or intends to infringe or violate, said complainant's rights under said re-issued letters-patent, by manufacturing or having manufactured for him, or selling tuckers, tuck-markers, or creasers substantially similar or embodying said pretended invention and improvement secured by complainant's said letters-patent, or otherwise howsoever, or in any way or manner whatsoever, damaging or injuring said complainant.

This defendant, further answering upon information and belief, would further represent, state, and aver that on the 30th day of May, 1838, there was granted, and duly issued by the United States, letters-patent to one John Andrews, a citizen of the United States, and that on the 20th day of June, 1840, there was granted, and duly issued by the United States, letters-patent to one A. Bailey, a citizen of the United
17 States; each of which said patents was for a device for mortising machines or mechanism, and in each of which last two devices were embodied, embraced, and combined a spring or spring-lever, attached to and combined with the cutting or mortising chisel, or other device for boring and cutting a mortise in timber, plank, or material to be mortised or bored, and which said spring or spring-lever, when the device was in operation, performed the functions of automatically lifting said chisel, augur, or other device attached, from the timber, plank, or other material as aforesaid, after the cutting action had been made, and continuing to lift the same alternately with and after the cutting action, &c., and which said spring or spring-lever is substantially the same in principle, mode of operation, and result with the spring and the spring-jointed lever in said complainant's said original and re-issued patents.

And this defendant, having now fully and completely answered each and all of the material allegations in said complainant's said bill of complaint necessary and material for him to make answer unto in this behalf, prays to be hence dismissed with his reasonable allowances, expenses, solicitor's fees, and costs; without this, that there is any
18 other matter or thing not herein fully and completely admitted, traversed, or denied, material or necessary for him to make answer unto.

HERMAN B. GOODRICH.

UNITED STATES OF AMERICA,
*State of Illinois, ss:*

Herman B. Goodrich, defendant, being first duly sworn, deposes and says that he has read and is acquainted with the contents and statements in the foregoing answer by him made, and that the matters and things therein stated and set forth of his own knowledge are true, and the matters and things stated and set forth upon information and belief and upon the opinion of counsel he believes to be true.

HERMAN B. GOODRICH.

Subscribed & sworn to before me this 25th day of September, 1872.
[SEAL.] WILLIAM S. CADMAN,
*Notary Public in & for the City of Chicago, Ill.*

(Endorsed:) Filed Oct. 1, 1872. Wm. H. Bradley, clk.

And on the day and date last aforesaid the said complainant, by his

solicitors, comes and files his replication to the answer of the defendant in the words and figures following, to wit:

19 *Replication.*

UNITED STATES OF AMERICA, *ss:*

In the circuit court for the northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM } In chancery.
*vs.*
HERMAN B. GOODRICH.

The replication of Henry W. Fuller and Isaac W. Barnum, complainants, to the answer of Herman B. Goodrich.

These repliants, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter of thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true;
20 all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BONNEY, FAY & GRIGGS,
*Solicitors for Complainants.*

(Endorsed:) Filed Oct. 1st, A. D. 1872. Wm. H. Bradley, clerk.

And afterwards, to wit, on the eighth day of April, one thousand eight hundred and seventy-three, in the record of the proceedings of said court is the following entry, to wit:

HENRY W. FULLER } Chancery.
*vs.*
HERMAN B. GOODRICH.

The court having considered, and being now fully advised upon the application of the complainant for an injunction against the defendant as prayed for in the bill herein, for the present overrules the same.

21 And afterwards, to wit, on the nineteenth day of May, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER } Chancery.
*v.*
HERMAN B. GOODRICH.

This day came the complainant, by C. C. Bonney, his counsel, and the defendant, by Walter B. Scates, *their* counsel, and thereupon the parties

to this cause having notified each other that they desired the evidence to be adduced in the cause to be taken orally, it is on their joint motion ordered by the court that such evidence may be so taken before any master or examiner of a circuit court of the United States, or commissioner thereof, in any judicial district where the witnesses to be examined may reside, upon such notice to the opposite party or counsel as such master or examiner may deem reasonable under the circumstances; it being understood that witnesses will be examined in the city of Chicago, at some convenient time to be selected by complainant's counsel, and that witnesses will be examined in the city of New York at some like time to be selected by the defendant's counsel, and either party is at liberty to use any affidavit filed in this cause as a deposition in chief made by the affiant, subject to the right of the opposite party to
22 cross-examine the witnesses, and copies of such affidavits may be made from the files for that purpose.

It is further ordered that each party shall produce before the examiner at the time of taking testimony and in cross-examination the various models and tuck-creasers produced before the court upon the re-argument of the motion for an injunction, or duplicates of such models and tuck-creasers, one of each kind.

And the court having duly considered the motion of the complainant, heretofore argued herein, to require the said defendant to file a monthly account of the tuck-creaser' manufactured or sold by *them* or under *their* control during the pendency of this suit, and for a bond to secure such damages as said complainant may recover in this cause, it is now here further ordered by the court that the defendant do file such account, commencing with the date of the filing of the bill of complaint herein, and rendering the same by calendar months thereafter, such account to be verified by oath, according to the practice of the court in such cases.

It is further ordered by the court that said motion for a bond be denied, with liberty to the complainant to renew the same if the de-
23 fendant shall be guilty of any unreasonable delay in preparing this cause for final hearing.

And afterwards, to wit, on the twenty-eighth day of June, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } Chancery.

This day came the parties aforesaid, by their counsel, respectively, and hereupon this cause came on to be heard upon the motion of the defendant to make Isaac W. Barnum, of Brooklyn, in the State of New York, a party complainant in this cause. Whereupon the said defendant claims, and the said complainant admitted, that since the commencement of this suit the said Isaac W. Barnum had become and still was the sole owner of the letters-patent, duly assigned and transferred by said Henry W. Fuller to said Isaac W. Barnum; and hereupon, with the consent of both parties to this cause, it is ordered by the court that the said Isaac W. Barnum be, and he hereby is, substituted for and in the place of said Henry W. Fuller as the sole complainant in this cause, and that the same be hereafter prosecuted in his name and for his benefit, in the same manner that it might have been if he had become the sole owner

of the said letters-patent and the rights and privileges thereby conferred before the commencement of this suit, and had brought the same in his own name, or the said Isaac W. Barnum may prosecute this suit in the names of Henry W. Fuller and himself, as co-complainants, for his sole benefit, if he shall be advised that it is more expedient for him to do so.

And afterwards, to wit, on the second day of July, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

ISAAC W. BARNUM
*v.*
HERMAN B. GOODRICH. } In chancery.

And now at this day comes as well the said complainant as the said defendant, by their counsel, respectively, and the information and motion of the defendant heretofore filed herein, that is to say, that the said complainant, Isaac W. Barnum, had filed a bill in the circuit court of the United States for the southern district of New York against the Remington Empire Sewing-Machine Company et al., and also against the Wilson Sewing-Machine Company, for alleged infringement of the letters-patent, whose alleged infringement is likewise the subject of controversy in the pending suit, said alleged infringement on the
25 part of the said Remington Empire Sewing-Machine Company and the Wilson Sewing-Machine Company consisting of the sale by them, respectively, of the tucker made by defendant under his letters-patent, and which tuckers were purchased by the said Remington Empire Sewing-Machine Co. and the Wilson Sewing-Machine Company, respectively, of and from the said defendant herein, the said tuckers being manufactured in the city of Chicago, Illinois, by the respondent herein; and moving the court, upon such information, to restrain said Isaac W. Barnum from proceeding any further in the prosecution of his said suits against the vendees of the respondent herein, the said Remington Empire Sewing-Machine Company et al. and the said Wilson Sewing-Machine Company, or from prosecuting any other suits anywhere against vendees of respondent's tuck-markers, which are manufactured in Chicago by the respondent, accounted for to this court, and sold to other persons to resell. And the said motion coming on to be heard upon the motion, notice thereof to complainant's counsel, and affidavit, and after argument of counsel thereupon, the court, being fully advised in the premises, doth order that the said Isaac W. Barnum be restrained and barred from further prosecuting his said suits, now depending and undetermined in the circuit court of the United States for the
26 southern district of New York, wherein the said Isaac W. Barnum is complainant and the Remington Empire Sewing-Machine Company et al. and the Wilson Sewing-Machine Company are respondents, respectively, and that the said Isaac W. Barnum do not by himself, his agent, attorney, or assigns, take any further measures or action in said suits during the pendency of the suit in this court, or until the further order of this court, and that the said Isaac W. Barnum and Henry W. Fuller be restrained and barred from commencing any suit or prosecuting any suit which may be commenced by them, or either of them, against any vendee of the respondent herein for any alleged infringement of letters-patent of said Henry W. Fuller specified in the bill herein filed, based upon a sale or user of the tuck-markers of respondent by his vendees anywhere, which are made by respondent in the city

of Chicago, and which are alleged to be an infringement of the tuck-markers secured by letters-patent and belonging to complainant, and which are the subject of account and report to this court by the respondent, from month to month, under the special order of this court, of date May nineteenth, eighteen hundred and seventy-three; provided that this order shall not prevent said complainants, or either of
27 them, from prosecuting the above-named or any other suits for the manufacture, use, or sale of any such tuckers made elsewhere than at said Chicago, nor for any other tuckers which may be deemed to infringe the patents of said complainant; to the entry of which order the said complainant then and there, by their counsel, excepted.

And on the same day and year last aforesaid, in the record of the proceedings of said court in said cause appears the following entry, to wit:

ISAAC W. BARNUM
*v.*
HERMAN B. GOODRICH. } In chancery.

Now comes the complainant, by his solicitor, and moves the court to require that the defendant in this cause do, within a short day, to be named by the court, to file their bond, in such sum and with such sureties as the court may direct, to perform and pay such decree as the court may render against the defendant on the final hearing of this cause, and also that the defendants, in all causes in other judicial districts which said complainant is stayed from prosecuting by a previous order herein, be required to appear and give the like security; which said matters do stand over for affidavits and arguments thereon and in support thereof.

28 And afterwards, to wit, on the twenty-third day of July, one thousand eight hundred and seventy-three, in the record of the proceedings of said cause is the following entry, to wit:

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } Chancery.

This day came the parties aforesaid, by their counsel, and on their agreement and joint motion it is ordered by the court that the order heretofore herein for the taking of the evidence orally in this cause be so far modified as to allow any evidence herein to be taken before any notary public who may be selected by or with the concurrence of the parties to this suit.

And afterwards, to wit, on the twenty-eighth day of July, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause are the following entries, to wit:

HENRY W. FULLER ET AL.
*v.*
HENRY B. GOODRICH. } Chancery.

And now this day came the said complainants, by C. C. Bonney, esq., their solicitor, and the respondent, by Scates and Whitney, his solicitors, and the motion of the said complainant of July second, one thou-
29 sand eight hundred and seventy-three, to compel the said defendant to give a bond to pay such damages, if any, as might be

recovered against him in this cause, and to compel his vendees, in other suits stayed by order of this court of July second aforesaid, to appear and give like bond herein, the same now coming on to be heard was, after argument of counsel, overruled; to which order of the court the complainants did, by their counsel, then and there except.

HENRY W. FULLER ET AL.
*v.*
HERMAN B. GOODRICH. } Chancery.

And now at this time came the said complainants, by C. C. Bonney, esq., their solicitor, and the said respondent, by Scates & Whitney, his solicitors, and the motion of the respondents above to compel the complainant I. W. Barnum to show cause why he should not be attached for contempt of this court in violating the order of court of July second, one thousand eight hundred and seventy-three, and also for order enlarging said order to restrain said complainant Barnum from threatening and molesting said respondent's customers and interfering with his trade, now coming on to be heard was, after argument of counsel, overruled; to which order counsel for respondents then and there excepted.

30 And afterwards, to wit, on the third day of November, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER & ISAAC BARNUM
*v*
HERMAN B. GOODRICH. } In chancery.

Now come the parties, by their solicitors, and thereupon this cause is set down for hearing upon the pleadings, proofs, and exhibits filed herein; and after hearing a part of the arguments of counsel, the hour of adjournment having arrived the further hearing is postponed until to-morrow morning.

And afterwards, to wit, on the fourth day of November, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER ET AL.
*v.*
HERMAN B. GOODRICH. } In chancery.

Now comes again the parties, by their solicitors, and after hearing additional arguments of counsel, without concluding the same, the further hearing of the cause is postponed until to-morrow morning.

31 And afterwards, to wit, on the fifth day of November, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER ET AL.
*vs.*
HERMAN B. GOODRICH. } In chancery.

Now come again the parties, by their solicitors, and after hearing the

concluding arguments of counsel, the court not being sufficiently advised in the premises takes time to consider.

And afterwards, to wit, on the fifth day of September, one thousand eight hundred and seventy-four, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH. } In chancery.

Now come the parties, by their solicitors, and the court having considered and being now fully advised upon the matters heretofore submitted herein, dismisses the bill in this cause for want of equity.

It is therefore considered, adjudged, and decreed by the court that this cause be dismissed at the costs of the complainants, and that
32 the defendant do have and recover of and from the complainants his costs and charges in this behalf expended, amounting to the sum of dollars and cents, and that execution issue therefor.

And thereupon said complainants pray an appeal to the Supreme Court of the United States, which is allowed by the court, upon giving bond in the sum of five hundred dollars with security to be approved by the court.

And afterwards, to wit, on the nineteenth day of September, one thousand eight hundred and seventy-four, the said complainants, by their solicitors, came and filed the following appeal-bond, which reads in the words & figures following, to wit:

*Appeal-bond.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the October term, A. D. 1874.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH.

Tuck-creaser patent case III. Appeal in equity from the circuit court for the northern district of Illinois.

Appeal-bond.

33 Know all men by these presents, that we, Henry W. Fuller and Isaac W. Barnum, as principals, and Francis A. Stevens, as surety, are held and firmly bound unto Herman B. Goodrich in the penal sum of five hundred dollars, lawful money of the United States, for the payment whereof, well and truly to be made to the said Herman B. Goodrich or *their* heirs, executors, administrators, or assigns, we do hereby bind ourselves, and our heirs, and executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this 14th day of September, A. D. 1874.

The condition of the foregoing obligation is such that, whereas heretofore, to wit, on the 5th day of September, 1874, in the circuit court of

recovered against him in this cause, and to compel his vendees, in other suits stayed by order of this court of July second aforesaid, to appear and give like bond herein, the same now coming on to be heard was, after argument of counsel, overruled; to which order of the court the complainants did, by their counsel, then and there except.

HENRY W. FULLER ET AL.
*v.*
HERMAN B. GOODRICH. } Chancery.

And now at this time came the said complainants, by C. C. Bonney, esq., their solicitor, and the said respondent, by Scates & Whitney, his solicitors, and the motion of the respondents above to compel the complainant I. W. Barnum to show cause why he should not be attached for contempt of this court in violating the order of court of July second, one thousand eight hundred and seventy-three, and also for order enlarging said order to restrain said complainant Barnum from threatening and molesting said respondent's customers and interfering with his trade, now coming on to be heard was, after argument of counsel, overruled; to which order counsel for respondents then and there excepted.

30 And afterwards, to wit, on the third day of November, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER & ISAAC BARNUM
*v*
HERMAN B. GOODRICH. } In chancery.

Now come the parties, by their solicitors, and thereupon this cause is set down for hearing upon the pleadings, proofs, and exhibits filed herein; and after hearing a part of the arguments of counsel, the hour of adjournment having arrived the further hearing is postponed until to-morrow morning.

And afterwards, to wit, on the fourth day of November, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER ET AL.
*v.*
HERMAN B. GOODRICH. } In chancery.

Now comes again the parties, by their solicitors, and after hearing additional arguments of counsel, without concluding the same, the further hearing of the cause is postponed until to-morrow morning.

31 And afterwards, to wit, on the fifth day of November, one thousand eight hundred and seventy-three, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER ET AL.
*vs.*
HERMAN B. GOODRICH. } In chancery.

Now come again the parties, by their solicitors, and after hearing the

concluding arguments of counsel, the court not being sufficiently advised in the premises takes time to consider.

And afterwards, to wit, on the fifth day of September, one thousand eight hundred and seventy-four, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH. } In chancery.

Now come the parties, by their solicitors, and the court having considered and being now fully advised upon the matters heretofore submitted herein, dismisses the bill in this cause for want of equity.

It is therefore considered, adjudged, and decreed by the court that this cause be dismissed at the costs of the complainants, and that
32 the defendant do have and recover of and from the complainants his costs and charges in this behalf expended, amounting to the sum of dollars and cents, and that execution issue therefor.

And thereupon said complainants pray an appeal to the Supreme Court of the United States, which is allowed by the court, upon giving bond in the sum of five hundred dollars with security to be approved by the court.

And afterwards, to wit, on the nineteenth day of September, one thousand eight hundred and seventy-four, the said complainants, by their solicitors, came and filed the following appeal-bond, which reads in the words & figures following, to wit:

*Appeal-bond.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the October term, A. D. 1874.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH.

Tuck-creaser patent case III. Appeal in equity from the circuit court for the northern district of Illinois.

Appeal-bond.

33 Know all men by these presents, that we, Henry W. Fuller and Isaac W. Barnum, as principals, and Francis A. Stevens, as surety, are held and firmly bound unto Herman B. Goodrich in the penal sum of five hundred dollars, lawful money of the United States, for the payment whereof, well and truly to be made to the said Herman B. Goodrich or *their* heirs, executors, administrators, or assigns, we do hereby bind ourselves, and our heirs, and executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this 14th day of September, A. D. 1874.

The condition of the foregoing obligation is such that, whereas heretofore, to wit, on the 5th day of September, 1874, in the circuit court of

the United States for the northern district of Illinois, then being held in the city of Chicago, in said district, the above-named obligees recovered, by the judgment and consideration of the said court against the above-bounden obligors, a decree for the dismissal, at the costs of the plaintiffs, of a certain bill of complaint theretofore brought in said court by the said Henry W. Fuller and Isaac W. Barnum against the said Herman B. Goodrich; from which said decree the said Fuller and Barnum thereupon prayed an appeal to the Supreme Court of the United States, which was allowed to them upon their filing a bond in the penal sum of five hundred dollars, conditioned as the law directs, with
34 good and sufficient surety thereon, to be approved by the said circuit court:

Now, therefore, if the said Henry W. Fuller and Isaac W. Barnum shall well and truly prosecute their said appeal from the said decree of the said circuit court to effect, and shall answer all damages and costs that may be adjudged against them in case they shall fail to make their plea good in that behalf, then this obligation shall be void; otherwise to remain in full force and virtue.

HENRY W. FULLER. [SEAL.]
ISAAC W. BARNUM. [SEAL.]
FRANCIS A. STEVENS. [SEAL.]

Approved.
THOMAS DRUMMOND.

(Endorsed:) Filed Sept. 19, '74. Wm. H. Bradley, clk.

And the said complainant, on the day and year last aforesaid, came and filed the following stipulation, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court, of the October term, A. D. 1874.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH.

35 Tuck-creaser patent case III. Appeal in equity from the circuit court for the northern district of Illinois.

*Stipulation touching certificate of evidence.*

The above-entitled cause is a bill in equity brought by the appellants against the appellee for an alleged infringement of certain letters-patent. Said bill was dismissed for want of equity on final hearing at the complainants' costs, and the complainants have appealed from said decree of dismissal to the Supreme Court of the United States.

There was at the same time pending in said circuit court, between the same complainants against Enoch S. Yentzer and Walter Scates, two other bills in equity for the alleged infringement of certain letters-patent, one of which was the same as that involved in the above-entitled cause. Said last-mentioned suits were at the same time disposed of by a like decree against the said complainants, from which they have also appealed to the said Supreme Court.

The letters-patent involved in the three cases above described all re-

late to what are known as tuck-creaser devices for use on sewing-machines; and the testimony in the said three cases has been so taken
36 and printed together as to save much needless trouble and expense, and largely to facilitate the proper understanding of each case and its relations to the others, and the illustration thereof by models and machines, and so that the same cannot be conveniently separated; and it now appears to the parties that the preparation of a separate certificate of evidence in each of said three causes would involve needless trouble and expense, and present the matters in controversy for decision less clearly to the said Supreme Court than they could be presented in one certificate of evidence, to be used as occasion may require on the hearing of said appeals respectively in the said Supreme Court.

It is therefore stipulated and agreed, by and between the parties aforesaid to the said appeals, that one certificate of evidence shall be made as aforesaid, to be used in each of the above-named causes as the occasion may require, with the same rights, privileges, and advantages to each party as though the testimony relating to each case had been embodied in a separate certificate of evidence.

It is not understood that by this stipulation for one certificate of evidence for the three cases, the same are to be consolidated or so united as to be heard as one case, but the same are to be separately docketed with separate transcripts of the pleadings therein, respectively.

37 It is further stipulated and agreed by and between the parties that if, after the making of said certificate and the docketing of said causes, it shall be discovered that any matter or thing properly belonging thereto or to the record of said causes, or either of them, shall have been by any inadvertence or mistake omitted or overlooked, the same shall be supplied without prejudice to either party and at the least practical expense and delay.

It is further stipulated and agreed by and between the parties that the models and other exhibits used upon the hearing of said causes respectively in the said circuit court, or duplicates thereof, shall be produced by the parties who offered the same respectively in said circuit court upon the hearing of said appeals in the said Supreme Court, and there be identified, either by admission of the opposite party or by affidavit, as the occasion may require.

It is further stipulated and agreed that if the said appellants shall require any further time to file the records in said appeals than is allowed by the rules of said Supreme Court, they may have such time extended on their application ex parte, and without notice to any date, not more than thirty days next after the first day of the next term of said court.

38 It is also stipulated and agreed that if for any cause whatsoever the said Supreme Court should be pleased to require any further or other certificate of evidence in said cases, or any or either of them, the same shall upon such requisition be supplied with the least practical expense and delay and without an unnecessary prejudice to either party.

It is further stipulated and agreed that, upon the filing of this stipulation, the clerk of the said Supreme Court is authorized and directed to enter for the repective parties the appearance of the counsel by whom this stipulation is signed.

And it is further stipulated and agreed by and between the parties that said causes were duly heard and decided as upon their merits on bill, answer, replication, and evidence, according to the course of the court in that behalf, and that no objection shall be taken or heard for

the omission from the record, if any, of any matter or thing not material to a decision of said appeals upon the very merits of the controversy between the parties; and printed copies of the letters-patent in controversy may be used upon the hearing of said appeals, subject to the right to object to the genuineness or correctness of the same, if occasion therefor shall appear.

Chicago, Sept. 10th, 1874.

CHARLES C. BONNEY,

39 *Counsel for Appellants, Complainants in the Court below.*

SCATES & WHITNEY,

*Counsel for Appellee, Defendant in the Court below.*

(Endorsed:) Filed Sept. 19, '74. Wm. H. Bradley, clk.

40 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the proceedings of said court had in the case wherein Henry W. Fuller and Isaac W. Barnum were complainants and Herman B. Goodrich was the defendant, on the chancery side of said court, as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 1st day of October, A. D. 1874, and of our Independence the 99th year.

[SEAL.] WM. H. BRADLEY, *Clk.*

41 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court, of the October term, A. D. 1874.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH.

Tuck-creaser patent case III.—Appeal in equity from the northern district of Illinois.

*Assignment of errors.*

And now come the said appellants, by Charles C. Bonney, their counsel, and say that in the proceedings, orders, and decrees in favor of the said appellees, which are contained in the foregoing transcript of the record of the cause, there is manifest error in the following, among other things, to wit:

First. The said circuit court erred in dismissing the cause for want of equity.

Second. The said circuit court also erred in decreeing costs against said appellants and in favor of said appellees.

42 Third. The said circuit court also erred in not decreeing that the said appellees, defendants in the said court, are guilty of infringing the letters-patent of the said appellants, complainants therein.

Fourth. The said circuit court also erred in not awarding a perpetual injunction against the said appellees, as prayed for in the bill of complaint.

Fifth. The said circuit court also erred in not decreeing that the said

appellants are entitled to recover damages from the said appellees for such infringements; and in not awarding to said appellants a reference to one of the masters in chancery of the said court, to inquire of such damages and report the same to be decreed to said appellants.

Sixth. The said circuit court also erred in entering the order, a copy whereof is contained in said transcript, whereby said appellants were restrained from prosecuting suits in other courts of justice against other infringers of their said letters-patent.

Seventh. The said proceedings, orders, and decrees, so far as the same are in favor of said appellees and against said appellants, are otherwise manifestly erroneous and contrary to the law of the land.

43 Wherefore the said appellants pray that for the errors aforesaid the final decree of the said circuit court dismissing the said cause for want of equity, and the said order of the said circuit court restraining the said appellants from prosecuting suits against other infringers of their said letters-patent in other courts of justice, and the other proceedings, orders, and decrees in favor of said appellees and against the said appellants, in said transcript of the record contained, may be annulled, reversed, and altogether made as nothing, and that the cause may be remanded to the said circuit court, with directions to enter such orders and decrees therein in favor of said appellants as are prayed for in their said bill of complaint; and that they may be restored to all things which they have lost by reason of the errors aforesaid, &c.

CHARLES C. BONNEY,
*Sol. and Counsel for Appellants.*

Supreme Court of the United States.

HENRY W. FULLER ET AL., APPELLANTS,
*vs.*
HERMAN B. GOODRICH, APPELLEE.

44 And afterwards, to wit, on the first Monday of October, A. D. 1874, came the said defendant, by Walter B. Scates & Henry C. Whitney, his solicitors, and say' that there is no error either in the record and proceedings aforesaid, or in the order dismissing the bill aforesaid; and he prays that the said Supreme Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment aforesaid dismissing the said bill, in form aforesaid given, may be in all things affirmed.

WALTER B. SCATES &
HENRY C. WHITNEY,
*Sols. & of Counsel for Appellees.*

(Indorsement on cover:) No. 162. Henry W. Fuller and Isaac W. Barnum, appellants, vs. Herman B. Goodrich. N. Illinois C. C. U. S. Filed 15th October, 1874.

203, 204 And afterwards, to wit, on the day and year last aforesaid, the said complainant, by his solicitors, came and filed the following certificate of evidence, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court, of the October term, A. D. 1874.

HENRY W. FULLER AND ISAAC W. BARNUM *v.* ENOCH S. YENTZER AND WALTER SCATES. } Tuck-creaser patent. Case I.

HENRY W. FULLER AND ISAAC W. BARNUM *v.* ENOCH S. YENTZER AND WALTER SCATES. } Tuck-creaser patent. Case II.

205, 206 HENRY W. FULLER AND ISAAC W. Barnum *v.* HERMAN B. GOODRICH. } Tuck-creaser patent. Case III.

Appeals in equity from the circuit court for the northern district of Illinois.

Certificate of evidence for said appeals.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Thomas Drummond, presiding judge of the circuit court of the United States for said district, do hereby certify to the said Supreme Court that the above-entitled causes respectively were heard and decided by me upon the bills of complaint, answers, replications, and evidence in the same respectively, and that final decrees were entered therein on or about the 5th day of September, A. D. 1874, being one of the days of the July term of said court for that year, and that
207, 208 for the greater convenience of the court and counsel, and to save unnecessary expense, it was found expedient during the progress of said cases to take the testimony of each in connection with that for the others, and to illustrate the same by one set of models, machines, and other exhibits, and that this was accordingly done; but said cases were not consolidated, but were otherwise kept separate from each other.

And I do further certify that all the evidence upon which the said causes respectively were heard and decided by me, together with the objections made and exceptions saved to the same, is contained in the printed book of 142 pages annexed to this certificate and made a part hereof, entitled as follows:

[Printed book.]

209 UNITED STATES OF AMERICA.
*Northern District of Illinois:*

United States circuit court, northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* ENOCH S. YENTZER AND WALTER SCATES. } In chancery, for infringement of patent. Case No. 1.

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* ENOCH S. YENTZER AND WALTER SCATES. } In chancery, for infringement of patent. Case No. 2.

210 HENRY W. FULLER AND ISAAC W. Barnum *vs.* HERMAN B. GOODRICH. } In chancery, for infringement of patent. Case No. 3.

Depositions taken, pursuant to the order of the court, in behalf of the complainants, before John Oakey, a notary public, at the office of E. B. Barnum, in the city of New York, commencing August 29th, 1873.

Present for the complainants, E. B. Barnum, esq., and for the defendants, Walter B. Scates, esq.

The complainants, alleging that the legal title to the letters-patent dated respectively June 5th, 1860, and re-issue of Rose patent dated December 1st, 1868, has, since the commencement of this suit, to wit, on the fifteenth of May, 1873, been conveyed and transferred by said Henry W. Fuller to said Isaac W. Barnum, and that said Fuller remains and is interested in said letters-patent to the extent of one-half the net profits thereof, and that said complainants, Fuller and Barnum, are equally and jointly interested in any recovery which may be had herein; the defendants admit that the legal title to said letters-patent is now vested in the complainant Isaac W. Barnum.

The complainants in the first-named case called DANIEL BARNUM as a witness in their behalf, who, being duly sworn, testified as follows:

1st Q. What is your name, age, occupation, and residence?

211 A. My name is Daniel Barnum. I am 74 years old. I reside at Brooklyn, N. Y. I have been engaged for many years in the manufacture and sale of sewing-machine attachments of my own invention. I am a practical mechanic, and have been through the most of my life; am well acquainted with sewing-machines and attachments used on them, and well known as an inventor; and been frequently employed, during the last thirty years, as an expert in patent cases. I have been familiar with Henry W. Fuller's invention of the tuck-creaser. The first that I knew of it was, I think, in 1862. He was then engaged in getting them made at the same place where I was also getting an attachment of my own made, and from that time to this have been conversant with the fact that he has been, during that time, engaged in the manufacture and sale of the said tuck-creaser. I have been familiar, also, with various changes in the art of tuck-creasing made by himself and others.

2nd Q. Have you examined letters-patent dated June 5th, 1860, issued to Henry W. Fuller and Anthony W. Goodell, for improvements in means for marking cloth in sewing-machines, and are you familiar with the specification thereof?

A. I have examined the patent named repeatedly, and think I am familiar with the means used, as described in said patent.

3d Q. Is the description of the invention in the specification thereof sufficiently full and clear to enable a skilled mechanic to make the machine therein specified?

A. Yes; in my opinion it is.

4th Q. From your knowledge of the art, would a machine made in accordance with the specification be practically operative?

A. I think it would.

5th Q. Look at model Defendants' Exhibit No. 4, and state whether it represents the machine described in the said specification.

A. I think it does.

212 6th Q. State what you understand to be the invention of Fuller, as described in that patent.

A. As I understand it, the invention of Fuller, as set forth in his patent of June 5th, 1860, is found in the idea, first developed by him, of forming a crease in cloth for making tucks, in a line parallel with the seam of a preceding tuck being sewed on a sewing-machine and simultaneously with it, by means of markers placed on opposite sides of the cloth, one of which has a notch and the other a point fitting into it; the under one being connected with the bed-plate of the machine, and the other operated by the needle-arm or some of the moving parts of the machine, and so arranged in its connections as to vibrate in unison or simultaneously with the needle, and to press the cloth into the notch while the needle is in the cloth; and thus, by a succession of vibrations as the feed advances the cloth, to form a crease parallel to the line of sewing ready for folding for the next tuck.

The invention in also applicable to plaiting for shirt-bosoms, when the sewing is done through three thicknesses, while tucks have but two.

The drawings show the markers arranged for plaits, and for this purpose they are placed on the inside of the needle; but for making tucks the markers are to be placed outside of or in front of the needle, the arrangements for plaiting being different from those for the tucking, while the operation of the markers are the same. The invention also relates to marking a line with a pencil or similar article pressing on the cloth, this arrangement being for quilting or stitching.

I thus find the invention to be for three distinct purposes, each purpose requiring changes in the mechanism for producing the several results, which changes in mechanism effect no change of principle in the invention.

As I have stated, the drawings show the markers arranged for plaiting, and they are placed inside of the needle; the pencil for marking the lines is also shown inside of the needle. This arrangement is not applicable to tucking.

213 The specifications state that for tucking the markers should extend on the other side of the needle-arm, and for this purpose the bar which carries the marker can be fitted in any convenient manner; the arm *e* also requires to be changed to the other side in order to place the marking-points on that side. In doing this, I would remove the pencil and the bar *g*, with its markers, and place the markers on the arm *e* when reversed, and thus dispensing with all the parts except the arm *e*, and the markers and the bed-plate of the tucker. The specification states that "the marking point or notch *i* or *k*, or both, might be placed on the arm *e*, and provided with a suitable spring between the bar and point. The manner of attaching the parts to the sewing-machine must also be varied as circumstances may require for different characters of sewing-machines, or for different kind of work to be performed, and a vibrating motion may be given to the markers by any other device besides the needle-bar."

The specification also provides for alternating the notch and point so as to crease or form a ridge either above or below the cloth, as may be required. The point *m* is formed somewhat similar to the point *i*, both being thin, rounded, and blunt, chisel-forms, so as not to injure or catch in the cloth, and this point *m* may be fitted to slide in a groove for ad-

justing the same to the desired distance from the needle, or several of these points may be formed or attached permanently on a plate at short distances apart. The patent also provides that the notch may be formed of soft material, such as leather; the point being pressed into it will form its own notch and make a crease.

7th Q. Look at the model now shown you, and state whether that is constructed in accordance with the specification of the 1860 patent.

A. It is.

(Complainants offer the said model in evidence, marked "Exhibit B.")

214 8th Q. Was that model constructed under your supervision?

A. One part of it. The part which was made under my instruction was the part having a spring carrying a notch.

9th Q. Please state what parts of the specification describe such a model.

A. The specification states that the notch which forms a part that I had constructed might be placed directly on the arm *e*, and provided with a suitable spring between the bar and notch or point, as it is shown here. "The manner of attaching the parts to the sewing-machine must also be varied as circumstances may require for different characters of sewing-machines, or for different kinds of work to be performed."

One of the changes described in another part of the specification is in this language: "For tucking, the markers should extend on the other side of the needle-arm, and for this purpose the bar *g* can be fitted in any convenient manner; but where a holder or arm to the presser-foot is used in the manner shown, the hole into which said bar sets may pass through the same, and be provided with a clamping-screw, so that said bar *g* can be inserted from the other side, and the plate *l* also stands on the other side of the needle, a second slot, 3, being provided for this purpose. The arm *e* also requires to be changed to the other side in order to take the marking-points *i* and *n*."

The specification states in another place, "*l* is a plate screwed on to the bed *a*, and carrying the adjustable point *m* and leather *n* or its equivalent. The point *m* is formed somewhat similar to the point *i*, both being thin, rounded, and blunt, chisel-forms, so as not to injure or catch in the cloth, and this point *m* may be fitted to slide in a groove for adjusting the same to the desired distance from the needle, or several of these points may be formed or attached permanently on a plate, at short distances apart. The leather *n* is also represented as adjustable, and it forms a crease into which the point *i* acts, and said leather may
215 be set into a small metal holder, or it may be formed as a strip of sufficient length to comprise the distance to which the part *i* may be adjusted. The operation of this part is illustrated in figures 4 and 5, where the marking parts *i n* and *k m* are shown in larger size, and the fold or crease produced in the cloth is also represented. The parts *i n* produce a downward crease, and the parts *k m* an upward crease when the cloth is exposed to the action of these parts by passing between the same, and in order to give motion to these markers the bar or arm *e* strikes on the spring part of the arms *h h*, (see Fig. 3,) pressing the surfaces together and crumping or creasing the cloth."

10th Q. With the directions in the said specification as a guide, could an ordinary mechanic make a machine like model Exhibit B without the exercise of invention?

A. Yes; an ordinary mechanic skilled in a knowledge of a sewing-machine could do it.

11th Q. Have you seen the model Exhibit B in use for creasing purposes, or one like it?

A. I have seen one like it attached to a sewing-machine and used for making creases in cloth, and a handsome crease made.

12th Q. In your opinion, is model Exhibit B a practical working tuck-creaser, and will it do the work called for by the specification?

A. It is a practical truck-creaser, and will do the work called for in the specification so far as to make creases in cloth for tucks, but not for sewing three-ply plaits for shirt-bosoms, or for making a line for quilting.

13th Q. What constitute the essential elements or parts of the complainant's invention as applied to tuck-creasing?

A. One essential part is a plate carrying a point to be attached to the bed-plate of a sewing-machine, and an arm carrying a notch operated by the needle-arm or some moving part of the sewing-machine to vibrate in unison with the needle, the said notch being adjustable to and with the point attached to the bed-plate, with a suitable spring interposed
216 between the bar and the notch; the spring being interposed to meet or compensate for any inequalities in the material to be sewed. In case the material was of even thickness, the spring spoken of would not be material, and in that case it is not an essential element.

14th Q. Provided the arm itself was adjustable, or provided any other means of adjustment of the other marker or notch was used, would the requirements of your last answer be met?

A. If the arm *e* carrying the marker were itself adjustable, the requirement would be met. Any means by which the upper and lower markers can be brought into proper relations to each other with material of uniform thickness the markers could be successfully used.

15th Q. State how the crease is made in Fuller's invention.

A. By the cloth being forced into a notch by a point pressing the cloth into it by successive vibrations of the notch, as it is moved by the feed of the sewing-machine; the notch, being the vibrating part, forces the cloth over the point. The patent provides for a crease being made either above or below the cloth, by reversing the notch and point.

(Complainant offers in evidence models marked Exhibits C, D, F, and G.)

16th Q. Look at Exhibits C, D, F, and G, and defendants' Exhibits 6, 7, 8, 9, 16, and 17, and state whether they embody the invention of complainant Fuller, and state your reasons for your conclusions.

A. They embody the invention of Fuller. My reasons are that they each have a point or blade to be attached to the bed-plate of the machine, and they each have a notch operated by a moving part of the machine which vibrates in unison or simultaneously with the vibrations of the needle.

17th Q. Do you find in them all the mechanical parts which constitute the essential elements of Fuller's invention?

217 A. I do.

18th Q. Look at Defendants' exhibits 2 X, 3, and 18, being machines made by defendants Yentzer and Scates, and state whether you find embodied in them the invention of Fuller, and state, if so, your reasons for your conclusions.

A. I do find the invention of Fuller in 2 X and in 18, these each having a point or blade with a notch substantially the same as in the Fuller invention, each having the bed-plate carrying the under marker to be attached to the bed-plate of the sewing-machine, and each having upper markers operated by the needle-arm, simultaneously with the vibrations

justing the same to the desired distance from the needle, or several of these points may be formed or attached permanently on a plate at short distances apart. The patent also provides that the notch may be formed of soft material, such as leather; the point being pressed into it will form its own notch and make a crease.

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A. One part of it. The part which was made under my instruction was the part having a spring carrying a notch.

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10th Q. With the directions in the said specification as a guide, could an ordinary mechanic make a machine like model Exhibit B without the exercise of invention?

A. Yes; an ordinary mechanic skilled in a knowledge of a sewing-machine could do it.

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A. I have seen one like it attached to a sewing-machine and used for making creases in cloth, and a handsome crease made.

12th Q. In your opinion, is model Exhibit B a practical working tuck-creaser, and will it do the work called for by the specification?

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(Complainant offers in evidence models marked Exhibits C, D, F, and G.)

16th Q. Look at Exhibits C, D, F, and G, and defendants' Exhibits 6, 7, 8, 9, 16, and 17, and state whether they embody the invention of complainant Fuller, and state your reasons for your conclusions.

A. They embody the invention of Fuller. My reasons are that they each have a point or blade to be attached to the bed-plate of the machine, and they each have a notch operated by a moving part of the machine which vibrates in unison or simultaneously with the vibrations of the needle.

17th Q. Do you find in them all the mechanical parts which constitute the essential elements of Fuller's invention?

217 A. I do.

18th Q. Look at Defendants' exhibits 2 X, 3, and 18, being machines made by defendants Yentzer and Scates, and state whether you find embodied in them the invention of Fuller, and state, if so, your reasons for your conclusions.

A. I do find the invention of Fuller in 2 X and in 18, these each having a point or blade with a notch substantially the same as in the Fuller invention, each having the bed-plate carrying the under marker to be attached to the bed-plate of the sewing-machine, and each having upper markers operated by the needle-arm, simultaneously with the vibrations

of the needle, the notch being a spring-notch, which is the same in principle as that described in Fuller's patent.

In No. 3 of defendants' exhibits I find a notch and point reversed, and which would make a reverse crease. It also has a plate carrying the under marker to be attached to the bed-plate of the sewing-machine, and also an upper marker operated by the needle-arm and vibrating simultaneously with the needle.

19th Q. Do you find in these exhibits 2 X, 3, and 18 the mechanical parts which constitute the essential elements of Fuller's invention?

(Objected to as leading.)

A. I do.

20th Q. State what is the method of making the crease in these exhibits.

A. The needle-arm presses the notch on to the cloth which folds down on the point or blade.

21st Q. State how, in the Fuller invention, the width of tuck was obtained or determined.

A. By a gauge—an ordinary sewing-machine gauge.

22d Q. State to the best of your knowledge at what time a gauge became incorporated with the tucker as a part thereof.

A. I have no recollection of seeing a gauge embodied with a
218 tuck-creaser at any particular time; the first that I remember was attached to a tucker of Fuller's make in 1866 or 1865.

23d Q. State, if you know, when the smoothing-finger was first incorporated with the tucker as a part thereof.

A. I don't know when it was first so incorporated, but I think in 1867 or 1868.

24th Q. Look at letters-patent granted to C. D. Wheeler, February 14, 1860, and the certified model thereof, marked "Defendants' exhibit No. 5," and state the nature of said invention, and whether it embodies the invention of the complainant Fuller, as described in the specification of his letters-patent dated June 5, 1860.

A. C. D. Wheeler's patent is stated by himself to be for an improved marking-gauge, and for marking and measuring tucks, folds, &c., &c., and he says that "the object of my invention consists in combining with a sliding rule and guiding surface a spring-point for the purpose of measuring and marking tucks, folds, &c., which are extensively used in the manufacture of ladies' and children's clothing, shirt-bosoms, and other purposes." It is a device, as shown by the model, to be applied to the under side of the table; it is fitted with a sliding rule with a spring-point and notch filled with soft metal, and adjustable to any width by the scale, and fastened by a set-screw. It is designed, as stated in the patent, for measuring and marking folds of cloth by hand, and to facilitate the method of marking the same or similar folds, which usually, at that time, was done by measuring the distance by a card and needle, by ladies, at intervals or distance sufficient to enable them to fold cloth by the hand, folding it down at the points or marks made by the needle. It does not embody the invention of H. W. Fuller as described in said patent.

25th Q. State your reasons for the latter conclusion.

A. My reasons are, that it is designed to be a hand operation exclusively; it is not connected in any way with a sewing-machine or with any moving mechanism or machine. It is not designed for making
219 a crease of any kind, but, as is stated in the patent, is simply a marker, and its design being simply to facilitate a hand operation, as I have before explained.

Direct examination closed.

UNITED STATES OF AMERICA,
*Northern District of Illinois:*

HENRY W. FULLER, ISAAC W. BARNUM,
*vs.*
ENOCH S. YENTZER, WALTER SCATES. } Case No. 2.

The complainants in this suit called as a witness in their behalf Daniel Barnum, and offered as a part of his examination-in-chief his affidavit, filed in this case June 24th, 1872.

CITY, COUNTY, AND STATE OF NEW YORK:

DANIEL BARNUM, being duly sworn, says that he resides at Brooklyn, New York; that he has been engaged for many years in the manufacture of sewing-machine attachments, is a practical mechanic, is thoroughly acquainted with sewing-machines, their mechanism and attachments, is well known as an inventor for the last thirty years, and
220 has been during said period frequently examined as a mechanical expert in patent cases.

That he has examined and is perfectly familiar with reissued letters-patent No. 3218, issued to the complainant assignee by mesne assignments of Israel M. Rose, for an improvement in tuck-creasing attachments for sewing-machines.

That said improvement consists of a device for creasing cloth while being sewed by a sewing-machine, so that it can be readily folded and sewed into a tuck. It also involves certain improvements in the mechanism by which the creasing device is operated, and, among other things, in the connection or combination of the upper and lower parts of a tuck-creaser, so that they are together adjustable in their relations with reference to the needle of a sewing-machine.

By this invention the necessity of different attachments and adjustments which prevailed prior to Rose, by reason of the fact that the tuck-creasers were made in separate parts, was obviated, and an important advance was made in the art; so much so, that all tuck-creasers now made are built with their parts connected, and this feature is practically essential in a successful tuck-creaser.

The said improvement also comprises the use of a spring to lift the upper part of the creasing device from the cloth while the feed of the sewing-machine was in operation.

And deponent further says that he has examined a tuck-creasing device, stamped, "Pat. Oct. 26, 1869, April 11, 1871," made by the defendants, and is thoroughly acquainted therewith.

That he finds therein a tuck-creasing mechanism having its upper and lower parts so connected that they are together adjustable with reference to the needle of a sewing-machine when in operation, and they require but one attachment to the sewing-machine.

The spring to carry or lift the upper part of the creasing device from the cloth while the feed of the sewing-machine was in operation.
221 That in these two features the device of the defendant is precisely identical, in construction, mode of operation, principle, and result, with the invention of said Rose secured by said reissued letters-patent.

DANIEL BARNUM.

Sworn before me this 7th day of June, 1872.

E. B. BARNUM,
*Notary Public N. Y. C.*

1st Q. State whether the defendants' tuck-creaser mentioned in your affidavit above referred to was identically similar to defendants' Exhibit No. 3?

A. I believe it is.

2d Q. Look at defendants' Exhibits 2 X and 18, and state whether they are substantially similar, in principle, construction, and mode of operation, to defendants' Exhibit No. 3 in the particulars noted in that affidavit.

A. I believe they are; in my opinion they are.

3d Q. State whether, in your opinion, the features of the Rose invention, as described in the sixth claim, are affected or changed by a variation in the means or place of attachment of the tuck-creaser to the sewing-machine.

A. I think they are not changed.

4th Q. State whether, in the defendants' Exhibits Nos. 2 X, 3, and 18, you find the upper and lower parts connected together so as to obtain a unity of adjustment of those parts on the bed of the machine to or from the needle.

A. I do find the upper and lower parts connected with a unity of adjustment to or from the needle.

5th Q. What functions does the clamping-block, or part of these exhibits by which the tucker proper is held, perform?

A. It performs the function of holding the tucker at any given point, while it permits of its adjustment to or from the needle. In Ex-
222 hibit 18 it is connected with the bed-plate of the machine by a set-screw, and is thus firmly attached to it.

6th Q. Does it perform the same office as the slot in the Rose bed-plate?

(Objected to as leading. Question withdrawn, and question 5 repeated.)

A. In the other two the clamping-plate holds the tucker, and permits its adjustment of both upper and under parts to and from the needle in the same manner as in Exhibit 18, the difference being that instead of being fastened by a set-screw to the bed-plate of the machine, Nos. 3 and 2 X are fastened to the presser-foot or bar by a set-screw; when in ope-ation 2 X and 3 are supported by the bed-plate of the machine, and to that extent they are all identical. The clamping-blocks perform the same function as the slot in the bed-plate of the Rose invention for effecting the unity of adjustment.

Direct examination closed.

United States circuit court, northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* HERMAN B. GOODRICH. } Case No. 3.

The complainants in the above-entitled suit called as a witness
223 in their behalf Daniel Barnum, and offered as a part of his examination-in-chief his affidavit filed in this suit June 24th, 1872.

CITY, COUNTY, AND STATE OF NEW YORK:

DANIEL BARNUM, being duly sworn, says that he resides at Brooklyn, New York; that he has been engaged for many years in the manufacture of sewing-machine attachments, is a practical mechanic, is thoroughly acquainted with sewing-machines, their mechanism and attach-

ments, is well known as an inventor for the last thirty years, and has been during said period frequently examined as a mechanical expert in patent cases.

That he has examined and is perfectly familiar with re-issued letters-patent No. 3218, issued to the complainant, assignee by mesne assignments of Israel M. Rose, for an improvement in tuck-creasing attachments for sewing-machines.

That said improvement consists of a device for creasing cloth by means of jaws so arranged that they will seize and pinch the cloth between their opposing surfaces. In the complainant's device the jaws are arranged in a vertical position with reference to the cloth, the inside jaw being practically stationary when in the act of creasing, and the outside jaw being arranged so as to move toward the other, carrying the cloth with it, which is then seized and pinched between the opposing surfaces while the needle is in the cloth and the feed at rest. As soon as the pinch is done the cloth is released by the opening of the jaws before the feed acts. This operation, continued as the cloth is fed, results in a well-defined crease parallel to the line of seam, and ready to be folded down for the succeeding tuck.

That said improvement also consists in the method of nipping or pinching the fabric being sewed, to form creases or ridges thereon, by means of jaws opened and closed at intervals to seize and pinch the fabric when at rest and then release it as the same is moved along intermittently by a suitable feeding mechanism. That said im-
224 provement also consists in certain details of construction, arrangement, and combination of mechanism for operating creasing devices; and among others—

1st. A spring for lifting the upper part of the creasing device from the cloth and allowing the jaws to open.

2d. A jointed lever carrying one of the pinching surfaces combined with a creasing device.

3d. The connection of the upper and lower parts of a tuck-creasing mechanism, making practically such a mechanism having all its parts connected and together adjustable as to its relation with the needle, by which means very valuable results are obtained. Tuck-creasing devices had been previously made in several parts requiring multiplied attachments and adjustments, but by the invention of Rose, in connecting the parts together, but one attachment became necessary, and the different parts bearing always the same relation to each other and to the needle, the different adjustments previously required were dispensed with.

4th. The combination of all the previous features in one mechanism.

And deponent further says he has examined a tuck-creasing device, stamped "H. B. Goodrich, Chicago, Ill., pat. Jan. 2, 1872," made by the defendant, and is thoroughly familiar therewith.

That therein he finds—

1st. The pinching jaws or surfaces arranged in a horizontal position, thus rendering it impossible for them to pick up the cloth themselves, requiring an additional device to bring the cloth between the pinching surfaces. The inside stationary jaw in the improvement of complainant is in this device laid flat upon the bed-plate, while the outside jaw is attached to end of the jointed lever as in the improvement of complainant. In operation the jointed lever is carried down by and with the needle-bar, and the cloth being forced into position by a thrust-finger provided for that purpose, is seized between the upper and under creasing surfaces and pinched while the needle is in the cloth and
225 the feed at rest, which operation, repeated as the cloth is fed in.

termittently by the feed-mechanism, results in a ridge or crease parallel to the line of seam.

And deponent further says that the only difference between the complainant's improvement and the defendant's device is, that defendant places the complainant's pinching jaws in a horizontal position instead of vertically, thereby preventing them from feeding themselves with the cloth, as well as pinching, and necessitating the employment of an additional device to accomplish what was readily done by the jaws themselves when used in a vertical position; and that in the change no new principle is involved nor new result obtained so far as the seizing and pinching of the cloth is concerned, nor is the change substantial in its character, the crease being obtained in the same manner and by the same means.

And deponent further says that he finds in the defendant's device also—

2nd. A coil spring arranged to carry the upper part of the creasing device away from the cloth while the feeding mechanism is in operation, and to permit the jaws to open, which spring is a mechanical equivalent for the flat spring used by the complainant to accomplish the same purpose.

3d. Also a jointed lever carrying at its outer end one of the pinching surfaces, precisely as in the improvement of complainant.

4th. That the upper and lower parts of the defendant's device are connected together, and has all its parts connected and adjustable with reference to the needle, being in this respect precisely like the improvement of the complainant.

5th. That there is the combination of all the previous features in one mechanism.

And deponent further says that, in the features enumerated, there is no substantial difference between the improvement of the com-
226 plainant and the device of the defendant, but the two devices, in construction, mode of operation, principle and result, are substantially identical.

DANIEL BARNUM.

Sworn before me this 7th day of June, 1872.

E. B. BARNUM,
*Notary Public, N. Y. C.*

1st Q. Look at defendants' exhibit No. 13, and state whether that is identically similar to the defendants' device mentioned and described by you in said affidavit.

A. It is.

2d Q. Look at defendants' exhibit No. 14, and state whether that is substantially similar to defendants' exhibit No. 13 in the particulars noted and described in the said affidavit.

A. In my opinion it is.

3d Q. State whether the spur in No. 14 is an equivalent for the sliding folder in 13.

A. In my opinion it is.

4th Q. State whether the turned-under end of the lever-arm in No. 14 is an equivalent for the hammer-shaped end of the lever-arm in No. 13.

A. I think it is, substantially, as they both seize the cloth and pinch it to form a crease.

5th Q. State whether, in your opinion, the upper opposing surfaces

in Exhibits 13 and 14 act as hammers, and give your reasons for your conclusions.

A. In my opinion they do not act as hammers simply. Exhibit 13 has an arrangement for an upper opposing surface representing somewhat the face of a hammer, but in operation it does not give the effect of a hammer, inasmuch as the spiral spring acts to relieve the force of the blow, and does not expend the power which operates it. The power which operates it continues in its action, and produces a gripping or jaw-like action, which pinches the edge to form a crease, instead of a blow like a hammer.

227 In No. 14 the turned-up end seizes the cloth and the force applied causes it to pinch the edge, increasing in its force until the creasing action is finished by the maximum pressure produced by the needle-arm. The maximum pressure in both is found at the finishing of the downward stroke of the needle-bar.

6th Q. State how the crease is made in the Rose invention.

A. In the Rose invention the crease is made on one side of the cloth by opposing surfaces seizing the cloth in a double condition, and pinching the edge of the fold, in contradistinction to markers, on opposite sides to the cloth.

7th Q. State whether the crease is made by defendants' exhibits Nos. 13 and 14 in the same manner.

A. Substantially, in my opinion, it is.

8th Q. Does the position in which the jaws are placed affect the principle or operation of Rose's invention, provided they do seize and compress the cloth in a doubled condition?

A. I think not, so long as they pinch the edge and form a crease simultaneously.

9th Q. Look at defendants' exhibits 11, 12, and 15, and state whether they embody the Rose invention as described in the second claim.

A. I think they do.

10th Q. Do they as far as the third claim is concerned?

A. They do.

11th Q. Do they as far as the fourth claim is concerned?

A. 11 and and 12 do, but 15 does not.

Examination adjourned until Monday, September 1st, at 10 a. m.

228 MONDAY, *September* 1, 1873—10 *a. m.*

Examination resumed pursuant to adjournment.

12th Q. Do they as far as the sixth claim is concerned?

A. No. 11 does not; 12 and 15 do.

(Complainant offers in evidence machines manufactured and sold by them, marked "Exhibits H, J, K, L, M, and N."

13th Q. Look at the last-mentioned exhibits, and state whether they embody the invention of Rose, as described in the second claim.

A. They do.

14th Q. Do they as far as the fourth claim is concerned?

A. They do, all except M and N.

15th Q. Do they as far as the sixth claim is concerned?

A. H, J, and K do not; L, M, and N do.

Direct examination closed.

Cross-examined by Walter B. Scates:

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. } Case No. 1.

1st X Q. What relation are you to the complainant?

229 A. I. W. Barnum is my son. I am not related to Mr. Fuller, the other complainant.

2d X Q. What relation, if any, have you sustained to Mr. Fuller in the management of his patent-interests heretofore at any time?

A. I have had no connection with Mr. Fuller in relation to the management of his patent, except to give my opinion as an expert.

3d X Q. State what, in your opinion, are the essential elements patented by Mr. Fuller as a tuck-marker.

A. In my opinion the elements consist primarily and mainly in placing markers for forming a crease in cloth on opposite sides thereof, and in attaching one of them to the bed-plate of the machine, and the other to be operated by the needle-arm or some moving part of the machine, and so arranging the markers as to come together, and the upper one to be vibrated in unison and simultaneously with the vibrations of the needle.

4th X Q. Do you understand his patent as including only the particular mechanism specified in the specifications of the patent and shown by his model filed in the Patent-Office, or as including any and all forms of mechanisms by which the same results may be attained?

A. I consider his patent as covering any and all mechanisms that may be substituted as equivalents for those described in the patent, and which will produce the same results substantially in the same way; and that it is not limited to the particular mechanisms described in the patent.

5th X Q. Do you consider any and all forms of mechanism, however different in their parts and as a whole from those referred to in the former question—as those referred to in Fuller's patent, in question four above—as equivalent when the same results are attained by them?

A. No, unless they produce those results in substantially the same way; if they do, I consider them equivalents.

230 6th X Q. Have all your answers on the examination-in-chief, in which you state that the tuckers Exhibits 2 X, 3, and 18 of defendants embody the elements of the Fuller patent, been based upon the above understanding by you of the extent of the Fuller patent?

A. They are based on the fact that I find in each of them the essential elements described, and that they are operated substantially in the same way as in the Fuller patent—considering that 2 X and 3, though attached to the presser-foot or bar when in operation, rest upon the bed-plate. My former answers have been based upon that understanding of the patent.

7th X Q. Do you find in the several parts of the tuckers Exhibits 2 X, 3, and 18, and in the combination of them as a whole, or in the one or the other, any substantial similarity in form described in the Fuller patent and model? And, if yea, state wherein.

A. I do find markers on opposite sides of the cloth in 2 X, 3, and 18, which are substantially similar, but not exact in form with the markers shown in Fuller's model; the point in 2 X and 18 being identical in form, and the notch being a spring notch, which is substantially identical, the forms for operating them being different, but operating substantially

in the same way. In No. 3 the markers are substantially the same, but placed in a reverse position.

8th X Q. Look upon model Exhibit No. 5, and state if the forms of the several parts and as a whole, and the markers thereon, are not substantially like the several like parts of Exhibits 2 X, 3, and 18; if not, state wherein they differ.

A. The form of the point is substantially similar to the point in No. 3. The notch is not of the same form, it being a recess formed by the point, not for making a crease, but for perforating the cloth; while in No. 3 there is a slot, and the point is designed for pressing the cloth into it by a blunt point, and thus forming a crease. In Exhibits
231 2 X and 18 there is a spring notch which is unlike the notch in figure 5. They are unlike, in form, the points in No. 5. Nos. 2 X, 3, and 18 are, as a whole, substantially unlike No. 5. They are also unlike in their several parts. They differ in 18 and 2 X in having the notch attached to a spring lever. By lever I mean a piece which acts as a smoother, holding the notch over the point to be operated by a spring lever, with a slot through it, to be attached to the needle-bar; while the spring-lever arm in No. 5 carries a point and a button, to be operated or used by the hand. In No. 3 the spring lever carries a point to be operated by the needle-arm; and in those parts they differ from the parts of No. 5. No. 5 has a bed-plate the same in form, for carrying the notch, as 2 X and 18, except that 2 X and 18 have an extension-plate for carrying the point.

9th X Q. Look upon patent of February 14th, 1869, granted C. D. Wheeler, and model No. 5, now shown to you, and state if you do not find in the specifications, drawings, and model the essential elements of a tuck-marker.

A. I do find the essential elements of a tuck-marker, to be used by hand, complete, but not of a tuck-creaser.

10th X Q. State whether, in your opinion, the arrangement of the upper and lower parts of Exhibits 2 X, 3, and 18, their several forms, and the forms and arrangements of the markers thereon, are not respectively substantial equivalents to the like parts, forms, and arrangements of Exhibit No. 5 as and for tuck-markers.

A. They are not substantially like No. 5 in their arrangements. The question is so stated that it is difficult to draw the comparison so as to make the answer to meet all the conditions of the question. Not as it is.

11th X Q. Are not the markers in Nos. 2 X, 3, and 18 substantial equivalents to the markers in No. 5, for tuck-marking?

A. Not in their several relations.

12th X Q. Are they not substantial equivalents in form?

232 A. They might be so if they were substituted and placed in No. 5, to be operated by hand; but as they are constructed to be used for a tuck-creaser, they are not equivalents in any sense. No. 5 is not a tuck-creaser.

13th X Q. Could not the markers in model No. 4 be substituted for those in No. 5, and used for tuck-marking?

A. They might for marking by hand, as in No. 5, being detached entirely from the sewing-machine.

14th X Q. Could not the form and substance of the markers in No. 5 be used in No. 4 in marking cloth with the latter mechanism?

A. If simply the markers in No. 5 were to be detached from No. 5 and attached, the under marker to the bed-plate and the upper marker operated by some moving part of the sewing-machine, and so arranged

as to vibrate simultaneously with the vibration of the needle, such markers might be so used, but that would not be like No. 5.

15th X Q. Question repeated.

A. Yes.

16th X Q. If they could be so used, as to form and substance, are not the markers in No. 4 equivalent to those in No. 5 as markers?

A. No.

17th X Q. In your answer to question 6 of the examination-in-chief you speak of attaching the upper marker to the needle-arm or moving part of the machine. State if that can be done under any directions given in the specifications, or if it can be done at all without reconstruction or invention, and if you say it can, state how.

A. Yes, undoubtedly; and it can be done by following the instructions of the specifications. I would change the arm *e*, which itself is attached to the needle-arm, to the other side from that which is shown in the model and drawing, and screw it fast, which makes it a part of the needle-arm, moving with it. I would then take the clamp which holds the pencil *f* to *e*, and attach or substitute one of the markers for
233 the pencil in its place, and screw it fast to *e*, and thus attach it to the needle-arm, a suitable spring being interposed between bar *e* and the marker.

18th X Q. Does paragraph in specification beginning "It will be evident that the marking notch or point *i* or *k*, or both, might be placed directly on the arm *e* and provided with a suitable spring between the bar and the point," contain the directions you refer to in your last answer, and all the directions given, by which the mode of placing the marking point or notch, or attaching it to the arm *e* or to the needle-arm as you have said in your answers to questions 6, 9, 11, and 12 in chief?

A. It does not contain all. In the answers referred to I have pointed out other parts of the specification which, with the drawings and models, would enable any skillful mechanic well acquainted with the art of manufacturing and using sewing-machines to make and apply the same, as I have before stated in the several answers given. I do not find specific instructions given in the specification for making, by the measure of a rule or compass, any one single part of the invention; but I do find by the specification and drawing, and the descriptions contained therein, sufficient information to enable any skillful mechanic to make the device with any changes necessary for the purpose intended. Instead of specific directions a large discretion is given to the skillful mechanic.

19th X Q. Do the specifications give any direction or make any suggestion for affecting an adjustment of the markers by an adjustment or moving of the arm *e* for that purpose?

A. No.

20th X Q. Do you understand, and is it your opinion, that Fuller's patent includes and covers the form of the notch and blade, or their equivalents, as to the form of the markers?

A. It is my opinion that Fuller's patent includes and covers a notch and blade irrespective of form, when either a notch or blade is connected with the plate of a sewing-machine, and the other connected with
234 a needle-arm or other moving part of a sewing-machine, and arranged so as to vibrate simultaneously with the vibrations of a sewing-machine needle for creasing cloth for tucks.

21st X Q. Have all your answers to questions in-chief, where you have said "there was a substantial similarity in the complainants' and defend-

ants' mechanism," been based upon this construction of Fuller's patent?

A. Yes, unquestionably.

22d X Q. Were a notch and blade patentable, in your opinion, at the date of patent to Mr. Fuller?

(Objected to as incompetent.)

A. Not simply as a notch and blade per se, or irrespective of its connections, but that they were patentable in connection with other mechanism for producing certain results.

23d X Q. Independent and apart from its attachment to a sewing-machine, does not the Wheeler device No. 5 contain all the essential elements for tuck-marking that are to be found in Exhibits C, D, G, M, Nos. 6, 7, 8, 9, 16, and 17, 2 X, 3, and 18, or their substantial equivalents?

A. No, sir.

24th X Q. Has not No. 5 a bed-plate carrying the marker equivalent to a notch or slot?

A. It has a bar having a recess, which might be equivalent to a notch or slot in certain relations.

25th X Q. Has it not an upper spring-arm permanently fastened to a bed-plate, carrying a marking point equivalent to a blade?

A. No, it carries a point.

26th X Q. Is not the bed-plate and upper spring-arm carrying the markers adjustable together as to the width between the line of marks to be made for a new tuck and the edge of the former tuck?

A. Yes.

27th X Q. Was not Wheeler's tuck-marking device the first within your knowledge of such adjustability?

235 A. Yes.

Adjourned to Tuesday morning, September 2nd, at 10 o'clock.

TUESDAY MORNING, *September 2nd*, 1873.

Cross-examination resumed at 10 a. m., pursuant to adjournment.

28th X Q. Was it not also the first to incorporate a gauge to measure the width of tuck with a tuck-marking device?

A. So far as I know, yes.

29th X Q. Have not models Nos. 1 and 3 sharp points as the upper marker, precisely or substantially like the point as the upper maker in No. 5?

A. As limited to the question of points simply, without reference to any means of marking or using them, yes.

30th X Q. If the points in Nos. 1 and 3 and No. 5 are substantially alike, how do you reconcile your answer to question' No. 18 and 19 in chief, in which you say No. 2 X, 3, and 18 are substantially the same with Fuller's No. 4, and in X questions 23 and 25 you say the point in the spring-arm of No. 5 is not equivalent to a blade as in C, D, G, M, and Nos. 6, 7, 8, 9, 16, 17, 2 X, 3, and 18?

A. In interrogatory number 18 my answer refers to 2 X, 3, and 18, as tuck-creasers embodying the parts for connecting and operating, by a sewing-machine, the several devices, and not for the markers simply; and in interrogatory 19 for the same reason. I have nowhere said that Fuller's invention consisted of markers alone, or when disconnected from the sewing-machine, and when not operated or to be operated by a sewing-machine. In my answer to X question 23 I answered, "No, sir," for the reason that I consider the vibrations produced by a

236 sewing-machine to be necessary to constitute a tuck-marker, or as I understand Fuller's invention or its essentials. In X ques-

tion 25 I answered, "No," for the reason that a sharp point is not equivalent for a blade.

31st X Q. How can you reconcile your answers to interrogatories 18 and 19 in chief with your answer to X question 23, so far as the same relates to Exhibits Nos. 1 and 3, seeing No. 5 and Nos. 1 and 3 all have sharp, rounded points for an upper marker?

A. I see no conflict requiring reconciliation.

32d X Q. Do you wish to be understood as expressing your opinion, as an expert, that a sharp or blunt rounded point, as on No. 5, to be operated by hand, is not equivalent or substantially like the points on Nos. 1 and 3, to be operated by the needle-arm on a sewing-machine?

A. As an expert, I will say that a blunt rounded point, as in No. 5, in itself considered, is substantially like No. 3, but is not substantially like No. 1. The points in No. 1 are sharp needle-points, which would perforate the cloth and not form a crease.

33d X Q. Have you not said, in answer to X interrogatory No. 8, that the rounded point in No. 5 would not make a crease or was not designed for creasing?

A. I have not said that it would not make a crease. I have said that it was not designed for making a crease, but for perforating the cloth.

34th X Q. How, then, can you say, in your answer to X interrogatory 32, that it is not substantially like No. 1, because the latter perforates the cloth?

A. It is not because of that solely, but because, in addition to perforating the cloth, it would make an indentation in the cloth, which, if it were applied to a sewing-machine and vibrated simultaneously with the needle, would make a crease.

35th X Q. Do you, in your answer to interrogatory 16 in chief, in which you say you find substantial elements of No. 4 in C, D, G, and Nos. 6, 7, 8, 9, 16, and 17, predicate or base that opinion upon the
237 fact of the markers being in the form of notches and blades, or upon the fact of their being so attached to the sewing-machine as to utilize the needle-arm as a motive power, or upon finding both these facts connected in each?

A. It is based on the fact that I find a notch, or point, or blade in each, and each upper marker operated by the needle-bar or some other moving part of a sewing-machine, so as to vibrate in unison or simultaneously with the vibrations of the needle.

36th X Q. If device No. 5 had a slot through its upper spring-arm, and it was so attached to a sewing-machine as to admit the needle to pass through the slot, and the spring-arm to be operated by and simultaneously with the vibrations of the needle-arm, would you then deem it as coming substantially within the principles of construction and mode of operation of Fuller's device No. 4?

A. With the changes proposed, it would not operate at all. Simply making a slot through the upper arm, and the needle to pass through it, the vibrations of the needle could not be made, as the needle would strike on the bed-plate, and the needle-arm could not reach the spring-arm; besides, as proposed, it could not be attached to the bed-plate; but if it were so changed in its construction as that it might be attached to the bed-plate of a sewing-machine, and so changed, also, that the needle could operate, and the upper part connected and operated by the needle-arm or other moving part of a sewing-machine so that the upper marker would vibrate in unison and simultaneously with the needle, No. 5 would then come substantially within the principles of construction and mode of operation of Fuller's device for tucking only.

37th X Q. If such alterations were made in the spring-arm of No. 5, and such attachment of his device to a sewing-machine made as stated in X interrogatory 36 and your answer thereto, what modification would you make in your answers to interrogatories 24 and 25 in chief?

A. My answer would be that it would cease to be Wheeler's de-
238 vice, and would become Fuller's invention by reason of the changes made, and for the reason that it would have no gauge, and for the reason also that it could not be worked by hand.

38th X Q. With your views and opinion of what is covered by and secured in Fuller's patent, would you not deem any device or mechanism for tuck-marking or creasing an infringement of said patent if it embodied:

1st. An under part attached to or resting upon the bed-plate of the sewing-machine, carrying the marker in the form of a notch or blade, or their equivalents, in forming a crease in cloth;

2nd. An upper part carrying one of like markers;

3rd. So attached to a sewing-machine that the upper part would vibrate simultaneously with the vibrations of the needle-bar, so as to bring the markers together on opposite sides of the cloth, marking or creasing the same while the feed was at rest and the needle in the cloth; and,

4th. Lift the upper marker from the cloth when the needle was withdrawn and the feed in motion?

A. I should.

39th X Q. If a device or mechanism, such as stated in the foregoing interrogatory, combined and embodied parts of any form of construction capable of and adapted to perform the functions and in the mode stated, would you not deem it an infringement of Fuller's patent, whatever might be the forms of the separate parts, or the manner or mode of their combination as a whole, or the mode or manner of attaching the device as a whole, or its parts, to a sewing-machine, or adjusting the markers relatively to the line of stitch?

A. As I understand Fuller's patent, or the invention covered by it, you may, in my opinion, remove all the mechanical parts described by him for operating it between the notch and point, and the place where the vibrating motion is obtained, and substitute therefor entirely different mechanical parts for producing the vibrations simultaneously with the needle, and you would still retain the invention, provided
239 the under marker was attached so as to be supported by the bed-plate of a sewing-machine and the upper marker was operated by and "made to vibrate simultaneously with the needle," and thus to form a crease parallel to the line of seam, while being sewed by a sewing-machine, for a preceding tuck. In my opinion, therefore, the mechanism or conditions stated in the question, if used on a sewing-machine as stated, would infringe Fuller's patent.

40th X Q. Do you not base or predicate the opinion you have expressed in your answers to interrogatories-in-chief Nos. 18 and 19 upon the grounds assumed in X interrogatories 38 and 39?

A. Substantially, yes.

United States circuit court, northern district of Illinois.

ISAAC W. BARNUM AND HENRY W. FULLER
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. } Case No. 2.

Cross-examination of Daniel Barnum, by Walter B. Scates, solicitor for defendants.

1st X Q. Look upon the re-issued Rose patent to Fuller, of December 1,

1868, and specifications, drawings, and certified model No. 10,
240 and state what you understand to be included in and covered by said patent, so far as claims 1, 2, 5, 6, and 8 are concerned.

A. In the first claim it covers a device by means of jaws for creasing cloth, or for forming a ridge or ridges on fabrics to be afterwards folded in the line of such ridges. The 2nd claim covers the method of nipping or pinching the fabric to form ridges or creases, as stated in the first claim, by means of jaws composed of opposing surfaces opened and closed at intervals on one side of the cloth, to seize and pinch the fabric while at rest, and then release it as the same is moved along intermittently by a feeding mechanism which is suitable for the purpose, or such as is used in sewing-machines. The fifth claim covers the combination of creasing device or devices of a tuck-marker with a jointed lever for purposes set forth in the patent. The sixth claim covers a tuck-creasing mechanism having its upper and lower parts connected and together adjustable, as relatively to the needle of a sewing-machine, and operated by a sewing-machine.

In the eighth claim, the combination with a tuck-marker having the upper and under parts connected and together adjustable as specified, of the lever and spring, substantially as in said patent set forth.

2d X Q. Do you understand this patent as including only the particular mechanisms specified in the specifications of the patent, and shown by the drawings and model filed in the Patent-Office, or as including any and all forms of mechanisms by which the same results may be attained?

A. As I understand this patent it is not limited to the specific mechanism described in the specification and shown in the model and drawings referred to. But that it covers the idea of making a crease by jaws, or opposing surfaces acting as jaws, and for that purpose of placing them on one side of the cloth, and so arranging them as to open and close at intervals, and to seize and pinch the fabric when at rest, and then to release it while the feed operates, to move it along intermittently so as to form a crease parallel to the line or seam being
241 sewed for a previous tuck. My opinion is that it includes other mechanism than that described, as equivalents, when they perform the functions of making a crease substantially in the way described in the patent.

3d X Q. Have all your answers in reference to this patent, on your examination-in-chief, been predicated or based upon the opinion just expressed, as to what the patent covers and includes?

A. They are based upon the patent, which, in my opinion, justifies the answers given.

4th X Q. Have they been based upon the extent of what the patent includes, as asked in the former interrogatory?

A. Yes, substantially.

5th X Q. Do you not find in the Wheeler device No. 5, unity of adjustment of the markers?

A. Yes, in themselves; but not relatively with the needle of the sewing-machine, or on a sewing-machine.

6th X Q. Do you not find unity of adjustment of the markers relatively to the edge of the stitch, to the last line of seam, without regard to its being sewed by hand or by a sewing-machine?

A. I find unity of adjustment in No. 5, relatively to a gauge against which the edge of the fold, or of the tuck, is placed, which may be used for marking in place of a card and needle by hand, at which marks thus made a fold may be made by hand for a tuck, which may be sewed either by hand or by a sewing-machine afterwards.

7th X Q. Will you say, as an expert, that the Wheeler patented device has no adjustability in relation to the width of tuck to be made?

A. I will say, as an expert, that it has adjustability in relation to the amount of cloth which is required for a tuck and space, but I do not see that it is used or designed to be used to give the width of tuck alone. The width of tuck must be determined by a gauge, set at the required distance from the needle of the sewing-machine, or by measuring from the edge of the fold, if sewed by hand.

8th X Q. Has the device No. 5 adjustability of the markers together as a unity or not?

242 A. Yes; in themselves.

9th X Q. Is that adjustability in unity as a whole substantially the same as found in Nos. 2 X, 3, and 18?

A. As to the adjustability of the markers themselves, yes; but not in its relations to the sewing-machine needle.

10th X Q. Are you of opinion that, so far as the unity of adjustment together of markers is concerned, it makes any difference whether that adjustment has relation to the edge of the last line of seam sewed by hand, or to the needle in a sewing-machine, for a seam about to be sewed by it on the last line of tuck? If in your opinion there be a difference, state what makes it.

A. So far as unity of adjustment together of markers is concerned, in themselves alone, there is no difference.

11th X Q. Is there any substantial similarity between the devices Nos. 10 and 2 X, 3, and 18, in the mechanism of their respective parts, and as a whole?

A. There is no substantial similarity in form. There is a substantial similarity as a whole in the mode of operation.

Cross-examination closed on 2d case.

United States circuit court, northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* HERMAN B. GOODRICH. } Case No. 3.

Cross-examination of Daniel Barnum, by Walter B. Scates, solicitor for defendants.

1st X Q. In your answers to interrogatories-in-chief 1 and 2, you
243 state that Exhibits 13 and 14 are substantially similar to that set forth in your affidavit filed in this suit, and in answer to interrogatory 3 in chief, you state that the spur in 14 is equivalent to the sliding folder in 13, and in your answer to the fourth interrogatory-in-chief you state that the turned-under end of the lever-arm in 14 is equivalent to the hammer-shaped end of the lower end of the lever-arm in 13. State if you find any such parts in Exhibit No. 10.

A. No; not in form. I do not find the spur and sliding folder. I do not find the turned-under end or the hammer-shaped end of the lower end of the lever-arm in Exhibit No. 10.

2d X Q. Can you say that the several parts of Nos. 13 and 14, in their principles of construction, are substantially like the parts of No. 10?

A. They are not like No. 10 in their construction, but in their principles as to the mode of operation, they are.

3d X Q. What function in tucking is performed by the slide-finger in No. 13?

A. It performs the function of placing the cloth in a position so that the clamping jaws or surfaces may seize it, by placing it in a doubled position or form, a function which is rendered necessary in consequence of the jaws being changed from a vertical to a horizontal position. Beyond placing the cloth in that position, I see no function that it performs in tucking.

4th X Q. Is it not a new and useful element introduced in a tucking device?

A. So far as I know, it is new, and is necessarily introduced to enable the jaws to seize the cloth, under the change made in the position of the jaws; but it does not aid the jaws or opposing surfaces in pinching and marking a crease on the edge.

5th X Q. Do you now answer the balance of interrogatory 4 as to whether the sliding finger is useful or not, and without introducing into your answer anything about "jaws?"

244 A. In the relations in which it is used, and for the purpose of placing the cloth in a double or folded condition, it is useful.

6th X Q. Would tuck-marker No. 13 be a practical device for tuck-creasing without it?

A. No.

7th X Q. Could any parts of Exhibits 13 and 14 be substituted by any part of No. 10 so as to make a practical operative tuck-marker without reconstruction or invention?

A. Without change in form, I do not see that the identical parts, except a lever-arm, which would not have to be substituted, as it is already to be found in Nos. 13 and 14; so, also, are the opposing surfaces forming jaws; so, also, is a spring for raising the lever-arm, all of which are substantially equivalent to the same parts in No. 10.

8th X Q. The former question did not call for your opinion as to the parts of 13 and 14 being equivalent to the parts of No. 10, but whether any, and, if any, what, part or parts of Nos. 13 and 14 could be substituted to and for any part of No. 10; and, if yea, point out what part or parts could be so substituted.

A. If the counsel means by his question to ask the witness whether any individual part of No. 10 in form, shape, length, breadth, and mechanical connections is absolutely identical with the parts, or any part, of Exhibits 13 and 14, and whether they can be substituted piece by piece, I answer no.

Examination adjourned at 5 p. m. to Wednesday morning, September 3d, at 10 o'clock.

WEDNESDAY MORNING, *September* 3d.

Cross-examination resumed at 10 o'clock, pursuant to adjournment.

9th X Q. Could the serrated nippers, pincers, or jaws, with the spring-levers connected with and operating them, of No. 10, be substituted for the upper spring-arm and hammer-shaped marker at its

245 end, and the under marker attached to the bed-plate of the device with its co-operating slide-finger in No. 13? If yea, state how it could be done.

A. If the counsel means to ask the witness whether the individual parts, or either of them, could be thus substituted without reference to the size, shape, &c., &c., and precise mode of operation, I answer no.

10th X Q. Could a like substitution of said parts in No. 10 be made for like parts named in the last question of No. 14? If yea, state how it could be done.

A. To this question I make the same answer as to the last.

11th X Q. Could the serrated nippers in No. 10 be substituted as markers to Nos. 13 or 14, to operate either perpendicularly or horizontally, without reconstruction?

A. No.

12th X Q. Is serration essential in the nippers in No. 10, or would they operate practically if smooth?

A. They would operate practically without serration, shaped as they are; the edges being chisel-edged, the serrations are only essential so far as they tend to aid in gathering the cloth preparatory to pinching the edge to form a crease.

13th X Q. Is serration required in markers on Nos. 13 and 14?

A. No; for the reason that the markers or nippers in Nos. 13 and 14 are changed in position relatively to or with the cloth, it being left open and resting on the under opposing surface, so that the jaws in that position could not be brought in contact with the cloth as in No. 10.

14th X Q. Do you know of a tucker constructed like the particular mechanism in No. 10 ever having been put on the market or used, and, if so, did it practically crease? Would such a mechanism, constructed precisely like model No. 10, do practical work in creasing?

A. I don't know that a tucker precisely like No. 10 was ever put on the market.

I have no hesitation in saying, both as an expert and as a me-
246 chanic, that a tuck-creaser of the form of No. 10, in its several parts, can be made to do practical work in tucking.

15th X Q. In your opinion of the Rose patent, does it cover and include nipping or pinching, as a mode or process for tuck-creasing in connection with the sewing-machine by any and all forms of mechanical devices, however different from No. 10 in form and arrangements, and combination of parts, and as a whole; or does it so cover and include only the particular mechanism described in the specifications of said patent and shown by drawing and model 10?

A. In my opinion, the Rose patent does cover and include nipping or pinching surfaces for making a crease by pinching the cloth to form a crease on one side of the cloth, as a mode or process for tuck-creasing with a sewing-machine, when the pincers are operated by the means described, or by any other mechanism which will operate opposing surfaces to make a crease on one side of the cloth, by pinching the edge to form a crease in substantially the same way as in the Rose patent, when connected with and operated by a sewing-machine.

16th X Q. Have all your answers to questions of complainants on your examination-in-chief, in which you say you find a substantial identity between defendants' Goodrich's devices Nos. 13 and 14, and complainants' device No. 10, been based or predicated upon the opinion of the extent of the Rose patent expressed by you in your last answer?

A. No, sir; except so far as to forming the crease by pinching the edge of the cloth on one side to form a crease by opposing surfaces on and operated by a sewing-machine; but so far I based my opinion, as I still do, upon the facts which I find in Rose's patent, and for the reason that I consider Rose to be the first man who invented and patented a mechanism for thus making a crease on one side of the cloth by a pinching device, opened and closed at intervals in connection with, and operated by, a sewing-machine; said crease being parallel to the
247 line of seam of a previous tuck; and therefore that Rose is entitled to, and has a patent for, his method, which covers equivalent devices for doing the same thing in substantially the same way.

17th X Q. Can you now say that the mechanical parts in form of Nos. 13 and 14 are substantially like the parts in No. 10, or are they simply equivalents in your opinion?

A. I have previously said they are not, as parts, in form like No. 10, and I say so still. But I do say that the opposing surfaces in 13 and 14, which form the pincers, are substantial equivalents for making the crease to those described in No. 10.

18th X Q. Does the Rose patent, in your opinion, cover and include unity of adjustment of the markers other than as connected with his particular mechanism?

A. In my opinion, Rose was the first man to make a tuck-creasing mechanism with upper and lower parts connected, and together adjustable as to its relations with the needle of a sewing-machine, and operated by a sewing-machine, and therefore that his patent covers such mechanism when connected and operated on a sewing-machine, irrespective of the particular mechanism for operating it; the markers being operated in substantially the same way.

19th X Q. Was Rose the first man who constructed a device for marking tucks with unity of adjustment of the markers without respect to the particular mode or manner for operating the device?

A. Rose was the first man who constructed a device for marking the width of a tuck, but not the first to make a marking device with upper and under part together adjustable with a gauge for marking the width of cloth by hand, embracing the width of both tuck and space, leaving the width of tuck to be determined for sewing it either on a machine or by hand.

20th X Q. Do you consider the upper spring-arm in either 13 or 14 as constructed substantially like the jointed lever in No. 10, under claim 5 of the Rose patent?

A. So far as they carry and operate the upper pinching device, and operated on a sewing-machine for the purposes described,
248 I do consider them substantially equivalent for the purposes of pinching the edge of the cloth.

Cross-examination closed on 3d case.

Redirect examination on the first case:

1st Q. Have you any interest in the letters-patent of June 5, 1860, granted Fuller and Goodell, and re-issued letters-patent, dated December 1st, 1868, granted to Henry W. Fuller, assignee of Israel M. Rose, or in the subject-matter of these suits?

A. No.

2d Q. Look at X question 23, and your answer thereto, and state why device No. 5 does not contain all the essential features of the other exhibits therein mentioned.

A. My reasons are that Exhibit No. 5 is not provided with any means for connection to a bed-plate or to any moving part of a sewing-machine, or for operating or vibrating it as a tuck-creaser.

3d Q. Look at X question 28, and your answer thereto, and state whether what you have therein referred to as a gauge, in the Wheeler device, constitutes such a gauge as that now used in connection with a tuck-creaser.

A. In view of its connection with No. 5, which is not a tuck-creaser, and with a view also that it cannot be used for gauging the width of a tuck, it is not such a gauge as that now used on a sewing-machine. I did not mean to be understood in that answer as saying that it was to be used for measuring the width of tucks, but that it was to be used for

marking cloth as a substitute for the card and needle, by hand, as was previously done.

4th Q. Look at letters patent granted to Calvin D. Wheeler, dated February 14th, 1860, and state whether you therein find any description of or intimation of the existence or use of any such recess or
249 under marker in the bed-plate of that device, as shown in model No. 5 of that patent.

A. I do not find described in the patent such a recess in the bed-plate as now exists in model No. 5, but the patent speaks of there being soft metal inserted in the bar C at *c* to prevent injury.

5th Q. Does not the language of the patent just quoted preclude the idea of a recess into which the point was to enter?

A. It does, both in the description and drawings.

6th Q. Look at X question 19, and your answer thereto, and state whether, in your opinion, any other means of adjustment of the upper marker other than the particular method employed by Fuller would not be an equivalent device.

A. Yes.

7th Q. Look at X question 35, and your answer thereto, and state whether, in your opinion, the utilization of the power of the needle-arm, or other moving part of the machine, forms any element of Fuller's invention.

A. Certainly not, for the reason that Fuller's invention includes certain essential mechanical parts which I have described; but those parts must be placed in such relations with the sewing-machine as to be operated by some motive power; in order to produce the result desired it is necessary, of course, that some power should be utilized to vibrate the upper marker, or else no indentation of the cloth could be obtained; and it is quite as necessary that the cloth should be fed by some feeding mechanism, or else no continuous crease would be obtained; and the needle-arm or other moving part of the machine sustains the same relation to the invention of Fuller as the feed. Fuller's invention or idea was to arrange proper mechanism, in such relations to both the needle-arm or other moving part, and feed, as would produce automatically a continuous crease in the cloth itself, parallel to the line of seam of a preceding tuck, at the same time such tuck was being sewed by a sewing-machine.

250 8th Q. Look at X questions 21 and 40, and your answers thereto, and state whether your answers therein referred to, are not also based upon similarity in parts, and in their mode of operation, as well as upon your opinion as to the scope of the patents.

A. Yes.

9th Q. Referring to your answer to redirect question 4, state what injury is prevented by the use of soft metal, against which the point in the Wheeler invention is to strike, as described in that patent.

A. Injury to the point itself. Provided some soft materials were not used, the point would, if used on hard metal, become blunted, so as not to mark the cloth.

10th Q. Had such a recess as appears in model 5 been provided by Wheeler, would there have been any occasion to provide soft metal to prevent such injury?

A. No.

Redirect examination, case 2.

1st Q. Look at X question 10, and your answer thereto, and state whether there is any such thing, properly, as a unity of adjustment, unless with reference to some co-operative or associated mechanism.

A. There is no such thing as unity of adjustment, except in relation to some mechanism or object that, for the purposes of adjustment, have a fixed relation relatively with the parts adjusted in unison when the adjustment is completed.

2d Q. Look at X question 11, and your answer thereto, and state whether you do not find in Exhibits 2 X, 3, and 18 a bed-plate and a vibrating upper part, and whether in those parts you do not find a similarity to model No. 10.

A. Yes.

3d Q. In your opinion, is the invention of Rose, as covered by the sixth claim of the re-issued patent, dependent upon the particular form or parts of a tuck-creaser, or is it applicable to any tuck-creasing mechanism having upper and under parts?

251 A. It is not dependent upon any particular forms or parts of a tuck-creasing mechanism, but is applicable to any tuck-creasing mechanism having upper and under parts connected, and together adjustable as to its relation to the needle of a sewing-machine and operated by a sewing-machine.

4th Q. Has the Wheeler invention any connection with the sewing-machine, or any relations, mechanical or otherwise, with the needle of the sewing-machine?

A. No, nor is it a tuck-creasing mechanism.

Examination adjourned until Thursday, 4th September, 1873, at 11 o'clock.

THURSDAY MORNING, *September 4th*—11 *o'clock.*

Met pursuant to adjournment.

Redirect examination in 3d case.

1st Q. Look at X-question 1, and your answer thereto, and state whether the hammer-shaped end and turned-under end of the lever-arm in Exhibits 13 and 14, so far as they constitute movable opposing surfaces, are not corresponding parts to the outer jaw of the Rose invention.

A. For pinching cloth on the edge of a fold, forming a crease, yes.

DANIEL BARNUM.

Redirect examination closed.

Adjourned to Friday morning, Sept. 5, at 11 o'clock.

252 Circuit court for the northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. } 2d case.

The complainants in this case called as a witness in their behalf ISRAEL M. ROSE, who, being duly sworn on their behalf, testified as follows:

1st Q. Look at the certified copy re-issued letters-patent, dated December 1st, 1868, granted to Henry W. Fuller, assignee by mesne assignments to Israel M. Rose, and state whether you are the inventor therein named, and whether you believe yourself to be the original and fir t inventor of the improvements therein described.

(Objected to as incompetent and irrelevant.)

A. I am the inventor therein described. I believe myself to be the first and original inventor of the improvement therein described.

2d Q. What was the date of that invention?

(Objected to as incompetent and irrelevant.)

A. During the spring of 1863, to the best of my recollection. The invention was not all made at one time, as I was regularly employed at that time on other work. The various features of my invention were made at different times extending over a period of perhaps two months.

253 3d Q. State, as near as you can, what was the first feature invented, and at what time the invention was made.

(Objected to, same reason.)

A. I could perhaps best answer that by relating the circumstances in detail.

At the time tuckers were first shown to me I was employed by James Wilcox, as a mechanic. Mr. Henry W. Fuller, I believe is his name, brought in a tuck-marker, desiring that it should be adapted to the Willcox & Gibb sewing-machine. It was brought to me by Mr. Hatch, the managing man there, and Mr. Fuller—Mr. Hatch instructing me to see what I could do with it; he informed me that it was not pressing, but that I might attend to it from time to time as I had leisure. I did not apply the Fuller tucker to the sewing-machine, but experimented immediately on adapting an adjustable device which should attach to the bed-plate of the machine. I used for that purpose an ordinary sewing-machine guide of the Willcox & Gibb sewing-machine, to which I attached a spring-arm that should extend between the needle and presser-bar of the machine and under the needle-bar, that its detached end would extend out and in front of the needle; to this detached end of the spring-lever I attached a shoe with a groove running lengthways of this shoe in its lower surface. I then constructed a piece of sheet steel, by bending, that it might slip onto the front edge of the Willcox & Gibb sewing-machine. I then turned up the edge of this piece of steel so as to form a knife-blade. I then adjusted this guide with this arm attached, as described, to the bed-plate of the machine, by means of the machine guide-screw, so that the groove in the shoe described should stand directly over this knife-edge described; the whole being so adjusted that the action of the needle-bar in its descent should strike upon this arm described, and bring this groove directly down upon this knife-edge described. I then tried a piece of goods on it, and discovered that it would crease the goods, but the action of the sewing-machine

254 when in motion, and the action of this grooved piece for creasing as described, would displace this knife-edge that was placed on the edge of the machine. I then constructed from a piece of sheet metal, in the form of a letter L, as it were, and attached one end of this letter L, as it were, to the same guide to which was already attached this arm before mentioned, that the other detached end of this letter L should extend in front of the needle and directly under this grooved shoe, with the edge of the L turned up, would be substantially the same as before, except that the parts would sustain fixed relations to each other.

I have, and produce an experimental model made by me, which illustrates what I have above satted. The spring-arm and shoe are the identical parts that I experimented with; and the other parts are identically similar. That feature, to the best of my recollection, was made in the early part of March, 1863.

(Complainants offered in evidence the model and shoe produced and described by witness, marked "Exhibit O.")

4th Q. State when the other features of your invention were invented, and how you fix the time.

(Objected to for same reasons.)

A. As I stated before, my experiments extended over considerable time; it may have been a month or more.

I had that tucker tested by the lady operator employed in the store, a Mrs. Dickenson. I next attached a plain piece, like that of the Exhibit O, in place of the grooved shoe, for the purpose of making a break in the goods, by pressing the fabric between the plain piece and the knife. After that I constructed a pair of jaws and attached them to a piece of wire, which, as an experiment, I attached to the presser-bar of the sewing-machine; next, to the best of my recollection, I constructed two small rollers, which were held together by a semicircular spring; they were so arranged that their peripheries were held together by means of this semicircular spring; the whole being attached to
255 an arm, in place of the shoe described, so that the rollers would occupy the same position to the edge that the shoe did. After once attaching all the parts together, I retained that feature all the way through my experiments. I discovered that the rollers, acting in place of the shoe in yielding to the presser upon the knife for the purpose of creasing the goods, would retain hold of the goods and displace them, (the goods,) which suggested the idea represented in the model, No. 10, sent to the Patent-Office, viz: constructing a pair of jaws that, by the downward movement of the needle-bar of the sewing-machine, *that* they should be brought in contact with the fabric and acted on so as to pinch the fabric between these jaws, and at the upward movement of the needle-bar they should release their hold on the goods.

(All the foregoing questions and answers objected to for incompetency, impertinency, and irrelevancy.)

Direct examination closed.

Defendants' counsel states he has no questions to put to the witness.

And defendants' counsel objects to the above note being added to the deposition, the same being done by order of the complainants' counsel.

I. M. ROSE.

256 Circuit court of the northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. } Case No. 1.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. } Case No. 2.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
HERMAN B. GOODRICH. } Case No. 3.

To save time and prevent swelling the record, the complainants offer in evidence the first six pages of their printed history in pamp'lets,
257 in lieu of oral testimony by witnesses, to prove the statements therein made, and to be considered as evidence by witnesses to the truth of the said statements for the purposes of this trial.

Thereupon the defendants stipulate that for the purpose the said six pages of history may be considered as having been sworn to by witnesses as true, and as offered in evidence as proof of the statements therein made, but object to the admission of the said six pages of history, on the ground that the statements therein contained are incompetent, impertinent, and irrelevant as evidence to the issue in these cases, as evidence, and waive all other objections.

It is further stipulated by all the parties in these cases that the models and exhibits offered in evidence by complainants and defendants are as stated on the tags attached thereto, respectively, and that the statements made on said tags are true for the purpose of this trial, and that all the patents, with their specifications and drawings respectively referred to in the evidence taken in these cases, shall be considered as in evidence.

FRIDAY MORNING, *September 5th*, 1873.

Examination resumed, pursuant to adjournment, at 11 o'clock.

Circuit court of the northern district of Illinois.

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* ENOCH S. YENTZER AND WALTER SCATES. } Case No. 1.

258 HENRY W. FULLER AND ISAAC W. BARNUM *vs.* ENOCH S. YENTZER AND WALTER SCATES. } Case No. 2.

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* HERMAN B. GOODRICH. } Case No. 3.

The complainants in the first-named case called Earle H. Smith as a witness in their behalf, and offered as a part of his examination-in-chief his affidavit filed in said case May 27, 1872. And the said Earle H. Smith, being duly sworn in said case, testified as follows:

CITY AND COUNTY AND STATE OF NEW YORK, *ss:*

EARLE H. SMITH, being duly sworn, says that he resides at Jersey City, New Jersey; that he is a solicitor of patents and practical mechanic, and has been for many years; that he is, and has been for many years, thoroughly acquainted with sewing-machines, their mechanism and attachments, and has been frequently examined as a mechanical expert in patent cases, and has invented several improvements in sewing-machines, some of which are now in general use.

259 And deponent further says that he has examined and is perfectly familiar with letters-patent of the United States granted to the complainant and one Anthony W. Goodell June 5, 1860, and numbered 28633, for an improvement in mechanism for marking cloth in sewing-machines. That the said improvement so secured by said letters-patent consists primarily in forming creases in cloth by means of markers, consisting of a notch and point so arranged that when the cloth is placed in position for operation the notch and point shall be found on opposite sides thereof, the notch being below and the point

above, or vice versa. Whichever may be placed above is then vibrated in unison with the needle and driven down upon the other, by which means the point carrying the cloth with it is forced into the notch, thereby making a mark, which operation being repeated as the cloth is fed to the needle, produces a crease parallel to the line of seam, to be afterwards folded down to be sewed into a tuck.

And deponent further says that he has examined a tucking device stamped "Pat. Oct. 26, 1869, April 11, 1871," contained in a box with a printed label as follows: "E. S. Yentzer & Co., proprietors of Yentzer's foot-tucker, feller, adjustable hemmer, and edge-stitcher, Chicago, Illinois," and is familiar therewith.

That said last-mentioned device is provided with a notch and point, so arranged as to have the point on the upper side of the cloth and vibrated by the needle-bar, and the notch on the under side of the cloth, and, when in operation, resting upon and supported by the bed of the machine; the whole being so arranged that the point is vibrated in unison with the needle and driven down into the notch, carrying the cloth with it, thereby making a well-defined crease parallel to the line of seam for tucking purposes, the said last-mentioned device being in its parts, mode of operation, and result substantially like the invention of the complainant.

The complainant's invention was in three parts, the lower of which was fastened to the bed-plate of the machine, the part carrying the upper marker fastened to the presser-foot, and the bar driving the latter to the needle-bar.

260 In the Yentzer device the parts have been connected together and the whole attached to the machine at the presser-foot, but in operation with the upper and lower parts sustaining the same relations and with the like connections as in the invention of the complainant. This difference, however, is immaterial, (the complainant in his specification attached to his said letters-patent expressly stating that the method of attachment of the parts must be varied as circumstances may require,) the Yentzer device presenting only a difference in arrangement, not in substance, the fact being that the lower part of the device is in precisely the same connection with the bed of the machine in both devices when in operation, and the difference one of attachment merely.

And deponent further says that he has read the instructions accompanying the Yentzer device, wherein the point is denominated a pricker, but deponent says that it is in no sense a pricker or perforator, the blunt, conical form making it practically impossible to perforate the material, especially through two thicknesses, as directed; and that if it were possible to perforate, the large holes which would be made would destroy the fabric, the fact being that a crease must necessarily be made, with or without a perforation, by the forcing of the material by such a point into the orifice provided, which, in its construction, presents a notch, one side of which is straight and the other diagonal, against both of which the cloth is jammed by the point, the crease being mainly formed by the contact of the point with the diagonal side, which is the precise arrangement of the complainant.

And deponent further says that the said Yentzer device and the invention of the complainant are substantially alike in construction, mode of operation, and in the result obtained.

EARLE H. SMITH.

Sworn to before me this 7th day of May, 1872.

[L. S.] E. B. BARNUM,
*Notary Public. N. Y. C.*

261 1st Q. Have you examined the questions and answers Nos. 2 to 25 of the direct examination of Daniel Barnum, and the models, patents, and exhibits therein referred to? and, if yea, state whether the facts therein stated by said Barnum are true, and whether, in your judgment, the opinions by him therein expressed are sound, correct, and true in every particular; and if you differ from him, state wherein.

A. I have examined the questions and answers referred to, and as to the facts therein stated by said Barnum, they are true, and as to the opinions expressed by him therein, in my judgment they are sound, correct, and true.

The complainants in the second-named case called Earle H. Smith as a witness in their behalf, and offered, as a part of his examination-in-chief, his affidavit filed in said case May 27, 1872. And the said Earle H. Smith, being duly sworn in said case, testified as follows:

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

EARLE H. SMITH, being duly sworn, says that he resides at Jersey City, New Jersey; that he is a solicitor of patents and practical mechanic, and has been for many years.

That he has also for many years been thoroughly acquainted with sewing-machines, their mechanism and attachments, and has invented several improvements in sewing-machines, some of which are now in general use, and that he has been frequently examined as an expert in patent cases.

And deponent further says that he has examined and is perfectly familiar with re-issued letters-patent No. 3218, granted to the complainant, assignee by mesne assignments of Israel M. Rose, for an improvement in tuck-creasing attachments for sewing-machines. That said improvement consists, among other things, in the connection or combination of the upper and lower parts of a tuck-creasing mechanism,

262 so that its parts are together adjustable in their relation with reference to the needle of a sewing-machine.

Prior to the invention of Rose, tuck-creasing attachments had been made in several parts, requiring as many places of attachment as there were parts, and also that each part should be separately adjusted with reference to each other, and especially with reference to the needle, a result which increased in difficulty as the parts were multiplied.

The adjustment of the upper and lower parts of the creasing instruments was necessarily nice, and a failure in adjustment necessarily resulted in the failure of the work.

By the invention of Rose these difficulties were obviated, and a tuck-creasing mechanism having its parts so connected that the relative position of the parts was always maintained, and that one adjustment served for all the creasing parts, was produced.

This feature is now embodied in all the tuck-creasers now on the market, and is essential to a perfect-working tuck-creaser.

The said invention also comprised the use of a spring to lift the upper part of the creasing device from the cloth while the feed of the sewing-machine was in operation.

And deponent further says that he has examined a tuck-creasing device stamped "Pat. Oct. 26, 1869, April 11, 1871," made by the defendants, and is thoroughly acquainted therewith.

That in said last-mentioned device he finds a tuck-creasing mechanism having its upper and lower parts so connected that they are together adjustable with reference to the needle of a sewing-machine when in operation, and they require but one attachment to the sewing-machine.

The spring to carry or lift the upper part of the creasing device from the cloth while the feed of the sewing-machine was in operation.

That in these two features the device of the defendant is pre-
263 cisely identical, in construction, mode of operation, principle, and result, with the invention of said Rose secured by said re-issued letters-patent.

EARLE H. SMITH.

Sworn to before me this 8th day of May, 1872.

E. B. BARNUM,
*Notary Public, N. Y. C.*

1st Q. Have you examined the questions and answers Nos. 1 to 6 of the direct examination of Daniel Barnum, and the models, patents, and exhibits therein referred to? and, if yea, state whether the facts therein stated by said Barnum are true, and whether, in your judgment, the opinions by him therein expressed are sound, correct, and true in every particular; and if you differ from him, state wherein.

A. I have examined the questions and answers referred to, and as to the facts therein stated by said Barnum, they are true, and as to the opinions expressed by him therein, in my judgment they are sound, correct, and true.

The complainants in the third-named case called Earle H. Smith as a witness in their behalf, and offered as a part of his examination-in-chief, his affidavit filed in said case May 27th, 1872. And the said Earle H. Smith, being duly sworn in said case, testified as follows:

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

EARLE H. SMITH, being duly sworn, says that he resides at Jersey City, New Jersey; that he is a solicitor of patents and practical mechanic, and has been for many years.

That he has also been for many years thoroughly acquainted with sewing-machines, their mechanism and attachments, and has in-
264 vented several improvements in sewing-machines, some of which are now in general use, and that he has been frequently examined as an expert in patent cases.

And deponent further says that he has examined and is perfectly familiar with re-issued letters-patent No. 3218, granted to the complainant's assignee, by mesne assignment of Israel M. Rose, for an improvement in tuck-creasing attachments for sewing-machines.

That said improvement consists of a device for pinching or nipping the cloth, provided with a pair of jaws, one of which is practically stationary while the other is forced up to and against the first, pinching the cloth between them. In the complainant's improvement they are arranged in a vertical position with reference to the cloth, and the outside jaw performs the office of seizing the cloth and forcing it between the pinching surfaces. The device is so arranged that the operation of pinching is performed while the needle is in the cloth and while the feed is at rest, and that the cloth is released by the opening of the jaws before the feed acts. This operation, continued, results in a well-defined crease, parallel to the line of seam, and ready to make a fold to be sewed into a tuck.

That said improvement consists also in the method of nipping or pinching the fabric being sewed, to form creases or ridges thereon, by means of jaws opened and closed at intervals, to seize and pinch the fabric

when at rest, and then release it as the same is moved along intermittently by a suitable feeding mechanism.

The said improvement consists also in certain details of construction, arrangement, and combination of mechanism for operating creasing devices, and, among others—

1st. The use of a spring for lifting the upper part of the creasing device from the cloth and allowing the jaws to open.

2d. The combination of a jointed lever, to which is attached one of the pinching surfaces, with a creasing device.

3d. The connection of the upper and lower parts of a tuck-creasing mechanism, making practically a tuck-creasing mechanism with
265 all its parts connected and together adjustable as to its relation with the needle, by which very valuable results are obtained; but one attachment to the sewing-machine being necessary, and the parts bearing always the same relation to each other and to the needle, the necessity of different adjustments of the different parts is entirely obviated; tuck-creasing device having previously been made in several parts, requiring multiplied attachments and adjustments.

4th. The combination of all the previous features in one mechanism.

And deponent further says he has examined a tuck-creasing device, stamped "H. B. Goodrich, Chicago, Ill., pat. Jan. 2, 1872," made by the defendant, and is thoroughly familiar therewith.

That in said last-mentioned device he finds—

1st. The pinching-jaws or surfaces arranged in a horizontal instead of a vertical position with respect to the cloth, with the addition of a folding-finger, which, as the upper jaw approaches the lower, forces the cloth between the pinching surfaces.

That by the arrangement of the jaws in a horizontal position the inside jaw rests flat upon the bed-plate, while the outside jaw is attached to the jointed lever, as in the improvement of complainant.

In operation, as the needle descends, the jointed lever is carried with it, as in complainant's improvement, and the cloth, having been forced into position by a folding-finger, is seized between the upper and under creasing surfaces, and pinched while the needle is in the cloth and the feed at rest, which operation, continued as the cloth is fed intermittently by a feeding mechanism, results in a ridge or crease parallel to the line of seam. And deponent further says that the only difference between the complainant's improvement and the defendant's creasing device is that the defendant has simply laid the complainant's jaws down on their sides, and makes the pinch horizontal instead of vertically, by which change it becomes necessary to complicate the tuck-creaser by the addition of an extra device to bring the cloth be-
266 tween the jaws, an operation not required by complainant's improvement, because the jaws in the latter perform the double duty of picking up the cloth as well as the pinching, and that, in deponent's opinion, the defendant's device is a very palpable attempt to evade the complainant's improvement, without any substantial change.

And deponent further says that he finds in the defendant's device—

2d. A coil spring arranged to carry the upper part of the creasing device up from the cloth, and to allow the jaws to open, instead of the flat spring of the complainant's, and that the one is a mechanical equivalent for the other.

3d. That there is a jointed lever, to which is attached one of the pinching surfaces, in combination with a creasing device, precisely as in the complainant's improvement.

4th. That the upper and lower parts of the defendant's device are connected together, and has all its parts connected and adjustable together with reference to the needle; and,

5th. That there is the combination of all the previous features in one mechanism.

And deponent further says that, in the features enumerated, there is no substantial difference between the improvement of the complainant and the device of the defendant, but that, on the contrary, the two devices, in construction, mode of operation, principle, and result, are substantially identical.

EARLE H. SMITH.

Sworn to before me this 8th day of June, 1872.

E. B. BARNUM,
*Notary Public, N. Y. C.*

267 Q. Have you examined the questions and answers Nos. 1 to 15 of the direct examination of Daniel Barnum, and the models, patent, and exhibits therein referred to? And if yea, state whether the facts therein stated by said Barnum are true, and whether, in your judgment, the opinions by him therein expressed are sound, correct, and true in every particular; and if you differ from him, state wherein.

A. I have examined the questions and answers referred to, and as to the facts therein stated by said Barnum, they are true, and as to the opinions expressed by him therein, in my judgment they are sound, correct, and true.

Cross-examination of EARLE H. SMITH in the first case, by Walter B. Scates, counsel for defendant:

1st X Q. Examine the X-questions, and answers thereto, of Daniel Barnum in case No. 1, numbered 3 to 40, inclusive, and the patents, models, and exhibits therein referred to, and state if you concur in the statement of facts and in the opinions and judgments expressed by Mr. Barnum in said answers; if not, state particularly and fully your own on all matters in which you differ with him.

A. I have examined the questions and answers referred to, and as to the facts therein stated by said Barnum, they are true, and as to the opinions expressed by him therein, in my judgment they are sound, correct, and true.

Cross-examination of EARLE H. SMITH in the second case, by Walter B. Scates, counsel for defendant:

1st X Q. Examine the X-questions, and answers thereto, of Daniel Barnum in case No. 2, marked 1 to 11, inclusive, and the patents, models, and exhibits therein referred to, and state if you concur in the statement of facts and in the opinions and judgments expressed by
268 Mr. Barnum in his said answers; if not, state particularly and fully your own on all matters in which you differ from him.

A. I have examined the questions and answers referred to, and as to the facts therein stated by said Barnum, they are true, and as to the opinions expressed by him therein, in my judgment they are sound, correct, and true.

Cross-examination of EARLE H. SMITH in the third case, by Walter B. Scates, counsel for defendant:

1st X Q. Examine the X-questions, and answers thereto, of Daniel

Barnum in case No. 3, numbered from 1 to 20, inclusive, and the patents, models, and exhibits therein referred to, and state if you concur in the statement of facts and in the opinions and judgment expressed by Mr. Barnum in his said answers; if not, state particularly and fully your own on all matters in which you differ from him.

A. I have examined the questions and answers referred to, and as to the facts therein stated by said Barnum, they are true, and as to the opinions expressed by him therein, in my judgment they are sound, correct, and true.

2d X Q. State if you acted as patent solicitor for the complainant Fuller in the matter of surrendering the original Rose patent, and in the preparation of new and additional specifications and claims for and in the re-issued patent of December 1st, 1868.

A. I acted as solicitor of patents in that case.

3d X Q. Look at copies of the Patent-Office letters on that application, dated October 12, 1868, October 16, 1868, and October 27, 1868, now shown you, marked "Exhibits Nos. 19, 20, and 21," by the notary in this case, and attached by him to your deposition in this case, and state if, in your opinion as an expert, the first and second claims of said re-issued patent cover and include a method of forming ridges or creases in cloth, by nipping or pinching the fabrics between opposing
269 surfaces, without regard to the substantial identity of the principle of construction in the form and arrangements of the parts of the mechanism by which the method is applied upon a sewing-machine for that purpose; or do those claims simply secure, cover, and include such a method in connection with the particular mechanism described and shown in the specification, drawings, and model No. 10, in evidence in this case?

A. The first claim referred to in the letters above mentioned in the question is not the claim found in the patent as issued. The second claim is not referred to in those letters.

The second claim of the Rose re-issued patent does cover the method of nipping or pinching the fabric to form ridges or creases thereon, by means of opposing surfaces on and operated by a sewing-machine, without reference to the special means of operating them by means of the sewing-machine, provided the operation of those surfaces is to form the crease by pinching the edge of the cloth on one side thereof in substantially the manner described in the patent. Rose being the first man, as I understand it, who invented and patented a mechanism for making a crease on one side of the cloth by a pinching device opened and closed at intervals in connection with and operated by a sewing-machine, for the purposes of tuck-creasing, he is, therefore, entitled to and has a patent for the method, as set forth in the second claim of his re-issued patent, which claim would cover equivalent devices for doing the same thing in substantially the same way.

4th X Q. Do you wish to be understoood by your last answer that a method is patentable, and that the re-issued Rose patent of December 1st, 1868, secures, covers, and includes a method independent of the particular mechanism described in said specifications, drawings, and model No. 10?

A. In my opinion, as an expert, method in connection with invention, and as used in that connection, is patentable. I do understand
270 the Rose re-issued patent as covering any mechanism that is substantially the same in its construction, operation, and in the result produced.

5th X Q. Will any mechanism, however different in form of its parts

and their combination and arrangement as a whole, be deemed by you as equivalent, and therefore covered by and included in the re-issued Rose patent, if in its results it forms a crease in the fabric by opposing surfaces operated by a sewing-machine?

A. Well, I should think not.

6th X Q. Have your opinions, given in answer to the direct and cross interrogatories, cases Nos. 2 and 3, in which you find substantial identity between the Goodrich devices Nos. 13 and 14 and the device No. 10, been based upon a substantial similarity of the mechanism, in the several parts and as a whole, of Exhibits Nos. 13 and 14, to No. 10, or have they been based upon what you deem equivalents in the results attained and in the mode of attaining them?

A. I base my opinions, as heretofore expressed, not so much upon a similarity of mechanism in the several parts and as a whole of Exhibits 13 and 14 to No. 10 as upon the fact that, as I understand Exhibits 13 and 14, their operation and result for creasing cloth in the sewing-machine is substantially identical in all said models.

7th X Q. Are the like opinions expressed in answers to interrogatories-in-chief and X-interrogatories, in which you find a like substantial identity or similarity of Exhibits 2 X, 3, and 18, with specifications, drawings, and model No. 10, under the sixth claim of the re-issued Rose patent, based upon similarity substantially of the adjustability of the former to the latter, or upon the adjustability of the former as equivalent merely to the latter?

A. Both.

Redirect examination of Earle H. Smith in the first case:

1st Q. Examine questions put to Daniel Barnum on his redirect
271 examination in this case, Nos. 1 to 10, and the answers thereto, the patents, models, and exhibits therein referred to, and state whether the statements of facts therein contained are true, and whether, in your judgment, the opinions expressed by him therein are sound, correct, and true.

A. They are.

Redirect examination of Earle H. Smith in case No. 2:

1st Q. Examine questions put to Daniel Barnum on his redirect examination in this case, Nos. 1 to 4, and his answers thereto, the patents, models, and exhibits therein referred to, and state whether the statements of facts therein contained are true, and whether, in your judgment, the opinions expressed by him therein are sound, correct, and true.

A. They are.

Redirect examination of Earle H. Smith in the third case:

1st Q. Examine the question put to Daniel Barnum on his redirect examination in this case, and the answer thereto, the patents, models, and exhibits therein referred to, and state whether the statement' of facts therein contained are true, and whether, in your judgment, the opinions expressed by him therein are sound, correct, and true.

A. They are.

EARLE H. SMITH.

Examination closed.

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273 DEFENDANTS' TESTIMONY.

United States district court, northern district of Illinois.

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

HENRY W. FULLER AND ISAAC W. BARNUM } In chancery, for infringement of patent. Case No. 1.
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. }

HENRY W. FULLER AND ISAAC W. BARNUM } In chancery, for infringement of patent. Case No. 2.
*vs.*
ENOCH S. YENTZER AND WALTER SCATES. }

HENRY W. FULLER AND ISAAC W. BARNUM } In chancery, for infringement of patent. Case No. 3.
*vs.*
HERMAN B. GOODRICH. }

Depositions taken (pursuant to the order of the court, that the
274 testimony in the cause be taken orally before one of the masters, examiners, or commissioners of the court) in behalf of the defendants, before Simeon W. King, one of the commissioners of said court, at the district-court room of said district, at Chicago, commencing July 8th, A. D. 1873.

Present for the complainants, C. C. Bonney and E. B. Barnum, and for the defendants, Walter B. Scates and Henry C. Whitney.

The defendants in the first-named case first called George L. Chapin as a witness in their behalf, and offered, as a part of his examination-in-chief, his affidavit filed in said case September 2d, A. D. 1872.

The defendants in the second above-named case offered the affidavit of said George L. Chapin, filed September 2d, A. D. 1872, in this cause, as the commencement of his examination-in-chief in said cause.

The defendant in the third above-named case offered the affidavit of George L. Chapin, filed in this cause on the second of September, A. D. 1872, as the commencement of his examination-in-chief therein.

GEORGE L. CHAPIN, being duly sworn in the foregoing cases in behalf of defendant, testified as follows:

(Continuation of the direct examination of George L. Chapin, by the defendants, in case No. 1. Mr. Scates:)

Q. 1. State, Mr. Chapin, if you are the same person who testified in the affidavit referred to as filed September 2d, 1872.

A. I am.

Q. 2. I would ask you to proceed and state what similarity or difference, if any, in the principles of construction and mode of operation and results, you find between the Fuller patent, referred to in your examination, and the Yentzer patent, as shown by the patents themselves, the drawings and specifications thereto annexed, and models respectively, all of which are now shown you.

A. In the Fuller patent are shown two distinctive devices for
275 so operating upon cloth as to leave a mark or crease upon which the cloth may be folded. One of these devices is a very common one. It consists of a pencil, or other similar marking material, which,

when moved on the cloth, or when the cloth is moved under it, leaves a coloring substance on the cloth as a guide for folding the cloth. No such device is found in the Yentzer patent, nor any equivalent device therefor which operates on the same principle, or can be made to operate on the same principle. Further than this, there are no means, nor no mechanism, in the Yentzer patent whereby such a pencil or pigment can be attached or made to operate to mark the cloth in any manner so that the latter could be evenly folded. This pencil is fastened to a bar, which projects out from the needle-arm in nearly a horizontal direction, and it is an entirely useless piece of mechanism and an idle one when other mechanism, which I shall hereafter describe, is in use. Projecting outward from the presser-foot, and fastened to it, is a substantial bridge or frame-piece, which supports a bar running parallel with the bed of the machine, and nearly parallel with the needle-arm. This bar, which is elevated, supports one or more spring-arms which are provided with two slides or markers, one being a point operating in an elastic bed fastened to the plate of the marker, and the other being a point or sharp mechanism fastened to the bed-plate and operating in an elastic bed or bearing substance, which is attached to one of the aforesaid spring-arms. The bar which supports the pencil and is attached to the needle-arm, in its downward movement, comes in contact with the spring-arms, and causes the points above mentioned to mark the cloth. The distinct features of this invention consist in the elevated bar projecting out from the frame (attached to the presser-foot) the spring-arms, the bar projecting out from the needle-arm with the points, and the bed-plate on which they strike. In the Yentzer patent there is no frame-work projected out from the presser-foot, nor any horizontal bar projecting out from the frame-work; neither are there any spring-arms attached to any hor-
276 izontal bar; neither is there any horizontal bar projecting out from the needle-arm to operate said arms, but instead thereof there is a pivoted double spring blade operating on both sides of an upwardly-projecting point. The means for operating this blade consist of a spring-arm attached to the bed-plate of the marker, and made to extend over the double blade. Vertically through this spring-arm is a slot through which the needle passes and allows the lower end of the needle-arm to force the spring down on to the double blade, and consequently the cloth, passing under the blade and over the sharp point, necessarily has a portion of its elasticity destroyed, so that it will readily bend to form a tuck at such place marked. The spring-arm in the Yentzer patent is not attached to the double blade or marker as in the Fuller patent, and the double blade is not attached to any horizontal bar projecting out from the presser-foot, and in this regard, and for other reasons above enumerated, I find the mechanism in the Yentzer patent, No. 127287, of May 28th, 1872, to be different in the mode of construction, and operating on a different principle from the Fuller patent, No. 28633, June 5th, 1860. In short, the only feature of similarity absolutely is the fact that they would perhaps perform the same function—how perfectly could only be ascertained by practical test.

The examination was here adjourned till 10 o'clock a. m. July 9, 1873.

The examination was resumed this 9th day of July, 1873, pursuant to foregoing adjournment.

A. I may add that a bar projecting out from the frame (attached to the presser-foot) or bar projecting longitudinally out from the needle-arm, spring marker-arms, and the bed-plate with the marking-points, are all absolutely necessary to perform the function of tuck-marking cloth

and if any one of them be omitted from the device, the latter will be wholly inoperative, except, perhaps, one marker might answer the purpose instead of the two as shown in the Fuller patent referred to. I will further state that not one of these enumerated parts in the Fuller
277 patent could be substituted by any one of the parts in the said Yentzer patent without invention or reconstruction, and that none of the mechanism in the Yentzer patented device can be made to perform any functions in the Fuller patent without also reconstruction or invention. I find an additional device in the Yentzer patent consisting of a slide-guide, the function of which appears to be to regulate the width of the tuck, the scales being marked on the bed-plate to be used as a guide for this purpose. In the Fuller patent there is no such slide-guide on the bed-plate, but instead thereof the spring-arms can be adjusted on the bar projecting out from the frame-work or bridge attached to the presser-foot. When the slide-guide in the Yentzer patent is moved, the needle-arm still continues to strike the spring-lever or spring-arm on the same place, but when the spring-arms in the Fuller patent are moved on the bar projecting out from the frame attached to the presser-foot, the bar projecting out from the needle-arm necessarily strikes the said spring-arm at another point on the bar, thereby clearly showing that the two devices operate on distinct principles, inasmuch as they are severally clothed with different mechanisms.

The marking-point in the Fuller patent is adjustable in a slot in a bed-plate, so that it may be moved longitudinally to correspond with the notches or bearings in the end of the spring-arms when the latter is adjusted. In this device or Fuller patent, one marking-point projects up from the bed-plate, and the other marking-point down from one of the spring-arms; consequently, the point in the bed-plate operates in a bearing or notch in the end of one of the spring-arms, the other spring-arm having a point operating in a bed in said slot in the bed-plate, which shows that either spring-arm, with its respective marker, may perform the same functions, substantially, as the other spring-arm. The difference, therefore, in this regard, between the Fuller patent and the Yentzer patent is that in the Fuller patent the point or bar for marking must necessarily be adjusted in the bed-plate to a distance corresponding to the movement of the spring-arms. In the Yentzer patent the
278 marking-point is stationary, and in this regard entirely different as regards the necessity of an adjustment. In the Fuller patent there is a curved presser-plate or movable plate attached to a horizontal arm or frame-piece which is fastened to the presser-foot, the function of which plate is the holding of a cloth flat on the bed-plate as it passes through the machine or marker. One end of said movable plate is elevated very considerably above the bed of the machine, while the other end is curved around somewhat semicircular, and brought down to or nearly to the bed-plate of the marker, and operates independently of any other mechanism; it being an independent fixture in the Fuller patent. The bar which holds the cloth to the bed-plate in the Yentzer patent is attached to one end of the latter and extends lengthwise of it, and is rigidly fastened to the marking-blade, forming a different combination from the curved blade in the Fuller patent, inasmuch as at such times as the spring-arm is brought down on the blade the bar which holds the cloth to the bed-plate is made to bear harder thereon than when the needle-arm is ascending. If this bar, which holds the cloth to the bed-plate, were detached from the latter, no marking could be done, while, if the smooth plate be detached from the Fuller device, the marker will perform the same movement as though the plate were attached.

Q. 3. Now state the similarity or difference, if any, in the adjustability of the marking device in the respective patents, Fuller's and Yentzer's.

A. In the aforesaid Yentzer patent the marking device (proper) has no adjustment at all, it being a fixture relative to itself, that is, the point and the double spring blade. They are never moved to or from each other. But to make the adjustment, or get the width of the tuck, the bed-plate of the marker is moved longitudinally in a plate attached to the presser-foot, a second adjustment being made as above referred to by a guide plate, which also runs in the frame attached to said presser-foot; or, to make it appear plainer, the bed plate is constructed
279 in two parts; one part is attached to the presser-foot, and the other part carrying a spring-arm supporting the point and presser-bar to which the double plate is attached, slides in the plate as mentioned, whereby any desired adjustment is made without changing the relative positions of the point and double plate. In this regard there is a single adjustment to secure the proper width of tuck by changing the position of the two-part bed-plate. In the marker shown in the Fuller patent there are no such means provided for the adjustment. If the bed-plate be moved on a machine, the point or bearings for the point necessarily have to be moved in the slot in the bed-plate of the marker. This is also the case when the spring arms are moved on the bar projecting out from the frame on the presser-foot, whereby, in the Fuller patent, there is a compound adjustment, while, in the Yentzer, there is a simple one, the difference being wide and marked, inasmuch as great care on the part of the operator must necessarily be required to make an adjustment in the Fuller patent so as to bring the points properly over notches or bearings.

Such care is not at all required in the Yentzer patent, inasmuch as the marker proper never has its point changed relative to the plate. There is, therefore, a new principle involved in the Yentzer patent, not shown, nor in anywise anticipated, in the Fuller patent. The means for adjustment in one patent would be wholly useless and inoperative in the other patent in providing any kind of an operative adjustment to secure the proper width of tuck to be formed.

Q. 4. State the similarity and difference, if any, in the mode or manner of attachment of these respective devices, the Fuller and Yentzer, to a sewing-machine.

A. The Fuller device is a compound attachment, and the bed-plate thereof is a distinct and separate device, and has no mechanical connection with the other part, except the supporting of a marking point, or notch, as the case may be, and supporting what appears to be an extension-plate for supporting cloths running on the presser-plate.
280 This bed-plate is adjustable independently of the spring-arms above, and when it is moved the points or notches in it have to be moved back, and correspond to the spring-arms above, thereby requiring two adjustments to secure the proper width of tuck or attachment of the upper parts, such as horizontal rods, spring-arm, and curved presser-plate, which have all been described.

In the Yentzer, one part of the two-part bed-plate is attached directly by means of a slot to the stock-arm, instead of to the frame-work projecting out from the presser-foot.

In this examination I have taken a model, X, engraved by me, to be a correct representation of the device described in Yentzer's patent.

I will, however, say that the marking device proper in said patent differs from the model, inasmuch as what I term the two-part blade appears to strike a spring which bears on a point, instead of the two-part blade operating wholly on the point, as in said model.

The cloth in the device in the bed runs under the blade and over the point; and when the two-part blade comes down on the spring-plate, the cloths are marked, or, in other words, to make it more plain, there is a spring operating in conjunction with the two-part blade in the point, apparently for the purpose of freeing the cloth.

Q. 5. Please look at the models now shown you, as certified by the Patent Office on the 5th of June, 1872, and the tuck-marker now shown you with a label attached, marked "Plaintiff Yentzer's machine, sued on in said Fuller versus Yentzer and Scates," and marked by you on the under side with a "Z," and state, if you please, if there be any difference between it and the models, or what you have marked with an X as a model in your last answer, as to the mode or manner of their attachment to a sewing machine.

A. They are all attached to the presser-foot of the machine in substantially the same manner, except one, which appears to be ar-
281 ranged to be attached to the bed of the machine by a screw or screws. They are, therefore, except the one, held independently of the bed-plate of the machine.

A. In model marked "Z" the mechanism for attaching it to the stock-arm is not a socket, but recessed foot, which is provided with a screw-slot, so that it may be held to the stock-arm in substantially the same manner as those provided with round socket-holes in their respective features.

Q. 6. Please state, without repeating a description in detail of the Fuller and Yentzer patents, what similarity or difference there may be, if any, between the forming of the markers and spring and adjustability of the Fuller and Yentzer patents and models of the tuck-marker, marked "X" by you, and the patent and model of C. D. Wheeler, dated February 14th, 1860, No. 27179, now shown you, with the certificate of the Patent-Office to the model, dated the 10th day of July, 1872.

A. In the Wheeler patent there is a bed-plate, provided with a hole, in which a spur, attached to a vibrating spring-arm, enters more or less, and destroys a certain portion of the elasticity of the cloth passing over the bed-plate, so that the cloth, on a line that the point has made, may be folded. The spring-arm is rigidly attached to the plate, so that both may be adjusted to or from a guide-frame which governs, or may govern, the width of the tuck to be made. In the Yentzer models referred to every one has a spring-arm attached to the bed-plate of the tuck-marker, and on the end of one of these arms is placed a pin or point, which may be operated in the hole in the bed plate, and mark cloth passing over the latter, so as to form a line for a tuck in substantially the same manner and by substantially the same means as is done in the Wheeler patent, irrespective of any mechanism which may be employed to operate the several spring-arms.

In the bed-plates of the other two Yentzer models, certified to
282 by the Patent-Office, are holes through which or into which points may pass to mark cloth similarly to the Wheeler patent, and through their respective arms are holes in which points may be put to mark cloth.

It is clear that the means for making a mark on the cloth, as there shown in the Wheeler patent, are identical to the spring-arms, points, or holes in the said Yentzer models. They operate on precisely the same principle; and if the spring-arm of any one of the Yentzer models, except model X, were attached to the Wheeler bed-plate, it would perform the same function as does the spring-arm in the Wheeler patent on its proper bed-plate. The marker marked "X" has substantially the same

kind of a spring-arm as the other Yentzer models and the Wheeler model, as shown in the Wheeler patent, except that it does not carry a point, it being used to give a vertical reciprocating motion to a two-part blade, which operates on either side of a spur or point projecting upwards from the bed-plate. This point is a little broader than it is thick, while the other points are conical in form; and instead of hole being used in any part, the point enters the two-part blade interposed between the bed-plate and the spring-arm. The principle on which the marking is done is substantially the same as in the Wheeler patent, except that some more cloth is marked on every descending movement of the two-part-blade, and except that the two-part blade springs open a little when the said point enters it, the blade being made of spring material, and therefore it is yielding. The sides or peripheries of the bed-plates of the Yentzer model and the bed-plate of the Wheeler model are not yielding. The supporting-bar of the two-part plate in model X is new in principle and construction from any of the models referred to, although designed, together with the points, to perform the same function, which it does substantially.

The Wheeler device, as before stated, is adjusted in a frame, so that different widths of tuck may be determined. This is done by
283 sliding the bed-plate and spring through a frame-plate or bed-plate, both parts moving simultaneously, and being held by one set-screw.

The blade-point and spring-lever in model X is also adjusted as a unit, that is, by one movement, and is held in place by one set-screw. In this respect (that is, in the matter of adjustment) they operate on the same principle. The spring-arms of the three Yentzer models, (certified to,) carrying marking-pins and their respective bed-plates, provided with holes for the pins to operate in, are severally adjustable as a unit, that is, by a single movement in their respective bed-plate, and are held respectively by a set-screw, and in this regard, that is, the matter of adjustment to secure the proper width of tuck, they are substantially like the Wheeler patent.

In this regard I have not taken into consideration the quality of the work to be done, nor the quantity, nor the convenience of doing it. The adjustment in the Fuller patent previously referred to is not made, and cannot be made, by a single manipulation, owing to its construction, and a double adjustment is required to make any new adjustment, inasmuch as if the spring-arms are moved on their respective bar, the points and notches in the slot of the bed-plate have to be moved a corresponding distance, which is a second manipulation to accomplish the purpose, namely, to make a wider or narrower tuck, and in this regard the adjustment in the Fuller patent operates on a different principle, and are clothed with different mechanism, inasmuch as there is no unity or single movement which enables a single adjustment to be made. Further than this, the marking-point or marking-notch in the Fuller patent seems to be held wholly in the slot or bed-plate by friction, which arrangement is not shown or contemplated in any of the patents taken into consideration outside of this one. The spring-arms in the Fuller patent are compound in construction, but are formed to spring up and allow the
points to rise from the cloth when they are relieved from the
284 pressure above. In this respect they operate on the same principle as the Wheeler patent. The marking-points, however, are somewhat wider, and take in a little more cloth at each downward stroke.

(Hereupon the defendants offered in evidence the several patents and

models to be referred to, and now marked as follows: Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, (and the attached directions to No. 7,) 8, 9, 16, 17, and 18.)

Q. 7. Please examine the tuck-marker Exhibit 6, now shown you, and state, if you please, what in its mechanism is similar to the Fuller model device other than the spring carrying a blade, and another spring carrying a slotted notch.

A. There is no other similarity in the construction or mode of operation.

Q. 8. Please state what similarity or substantial identity there is between the Fuller tuck-marker, Exhibit 6, and the Fuller model, Exhibit 4, in respect to the mechanism as a whole, and the arrangement of the springs, and the forms of the markers in each respectively as a device.

A. The spring carrying the points, in Exhibit 6, is not a compound spring, but a simple one, while the spring-arms in model 4 are compound in construction. The first-mentioned device has a spring-bed for a slotted spring-plate to strike on. In this respect it is wholly different from model 4, which has no spring-bed at all. To make it more plain, the bed-plate carrying the point is a spring in Exhibit 6, and the slotted plate is a spring, and the latter is attached to the spring rigidly adjusted in the spring-plate. This construction is not shown in model 4.

The marking-points in Exhibit 6 are very much elongated transversely with the spring, and are placed on its flat side instead of on the ends of the springs, as in model 4. The curved slotted plate has a spiral frame, and as such, taking into consideration its ability to spring, is en-
285 tirely different in mechanical construction, and operates on a different principle from the notch-markers in model 4, although the slotted spring, with the spring-plate below carrying the points, appears to be designed for marking cloth. I find, however, nothing mechanically similar in Exhibit 6 and model 4, except it be the fact that both are designed to mark cloth and form tucks. In general construction it is so widely different that a person accustomed to using the one would hardly know how to attach or use the other without instructions.

Q. 9. State, if you please, if there be any similarity, or substantial identity, between No. 6 and No. 4, in the mode of attaching of the same to a sewing-machine.

A. No. 6 is complete, and when its parts are adjusted it can be fastened by screws to the bed-plate or table of the machine as a unit. This is not the case at all in model No. 4, inasmuch as the bed-plate in model 4 is a separate attachment. The bar supporting the spring-arms is a separate attachment. The bridge or frame supporting the bar or spring-arm is a separate attachment, and the curved presser-plate or spring is a separate attachment, all of which necessarily have to be put together respectively to their places on the machine, as previously described under the the head of Fuller model, and in this regard there is a very marked and wide difference in the mode and principle of attachment. This difference in attachment arises from the difference in the mechanical device in model 4 and Exhibit 6.

Q. 10. Please state the difference as between Exhibit 6 and model 4, as to the mode of operating the same by the needle-bar.

A. In Exhibit 6, the spring-arm carrying the spiral slotted plate is operated by a hook attached to a needle-bar; that is, it is lifted up by a hook, the spring carrying the spiral slotted plate down on to the cloth.

In this respect it is different from the mechanism in model 4, inasmuch as the spring-arms hold the markers off from the cloth until the spring-

arms are forced down by a bar projecting out horizontally from the needle-bar.

286 The operations are precisely the reverse of each other, because, in Exhibit 6, the marking is done by the force of a spring-plate, while in model 4 the marking is done by a positive blow and stroke on the spring-arms carrying their respective points on to the cloth. They therefore operate on different principles, and are provided with different mechanism to put their respective principles into operation.

Q. 11. Look upon Exhibit No. 7, now shown you, and state, if you please, if there be any similarity or substantial identity between No. 7, with the attached directions, and No. 4, in the mode of attaching of the same to a sewing-machine.

A. There is none.

Q. 12. Please state the difference as between Exhibit 7 and model 4, as to the mode of operating the same by the needle-bar.

A. In Exhibit No. 7 there is one spring-arm attached to the shaft of the vibrating arm of the machine, and acts directly upon a point attached to a separate bed-plate which is fastened to the machine. This arrangement is very simple, and dispenses with a compound spring-arm with both horizontal bars, and the bed-plate to hold points or notches. In fact it dispenses with all the principal features of mechanism in model No. 4, and operates on an entirely different principle, and by a different mechanism.

Q. 13. State, if you please, if there be any, and, if so, what substantial similarity or identity there is in any of the parts of Nos. 4 and No. 7.

A. There is none, except it be the fact that both devices are designed to mark cloth.

Q. 14. Look upon Exhibit No. 8, now shown you, and state, if you please, what similarity there is in its mechanism as a whole, its mode of attachment and principle of operation, or of any of its parts, with the model No. 4.

287 A. As a whole the mechanism in model No. 8 is distinct and different from the mechanism in model No. 4. The mode of attachment is entirely different in model No. 8 as compared with model No. 4, inasmuch as it is to be fastened directly to the bed of the machine, and thus obviate the necessity of attaching a part of the device to the bed-plate of the machine, and a part of it to the needle-arm, and a part of it to a frame projecting the stock-arm, as is the case in model No. 4. As to the mechanical construction, there is no substantial identity whatever, unless it be the fact that a notched blade is brought in contact with a long transverse blade to crease or mark cloth.

The marking in No. 8 is done by a rock-shaft, and in this regard it is different from all the models I have considered in this case, and operates on a different principle. The downward pressure of the blade is attained by a coil-spring fastened at one end of a rock-shaft, and at the other end to a frame in which the rock-shaft operates. The notched knife is lifted off from the blade by a crank, to be connected in some manner with the needle-arm.

Model 8 is a single attachment, and in that regard is distinct and separate in construction from the means of adjustment in model 4.

Q. 15. Look upon No. 9, now shown to you, and state, if you please, what substantial similarity or identity in its mechanism, as a whole and in its several parts—in its principles of construction, in its mode of operation, its mode of adjustment, its mode of attachment, and its form, and construction of the markers—if any there be, between it and model No. 4.

A. In model No. 9, as a whole, it is distinct and different from model 4. The spring in model No. 9 is not provided with any spur or point; neither has it a notch to mark the cloth.

The spring-arms in model 4 have points and notches for this purpose. In this there is a material difference. A notched arm is attached to a spring-plate and interposed between a plate and the aforesaid
288 spring-arm. There is no such notched arm with its respective spring in model No. 4, nor any equivalent therefor in any respect. The spring-arms in model 4 have their points operating directly in the notch or notches, and are distinct in that construction. The notched arm attached to its respective spring-plate strikes on a blade of a considerable length, said plate being a fixture on the bed-plate, and not being held by friction in the slot. In this respect the models 9 and 4 are very dissimilar in their mechanical parts. No part of model No. 9 could be made to take the place of any part of the mechanism of No. 4; neither would any mechanism in No. 4 answer the place of any mechanism in No. 9, except, perhaps, it be the holes to secure the plate carrying the under marker to the bed-plate of the machine. Model No. 9 has a single attachment, consisting of a guide-plate and bed-plate, adjustable on bed-plate of machine by a slot and screw. There is an upper arm-marker, which operates on a lower point or knife, in place of notches and points held by friction. A nib is struck up through the bed-plate of the marker. In this regard the device is wholly different from the adjustment in model 4.

Model 9 is to be attached to a machine by putting a screw through the bed-plate, but any such screw may be put through the bed-plate and through the guide, and thus hold them both together and to the machine. In consideration of model No. 9 there is no horizontal bar to hold the spring-arms, and there is required no bar running horizontally with the needle-arm to operate it, and there is no place to fix a pencil to it.

Q. 154. Look upon tuck-marker Exhibit No. 16, manufactured by Singer Sewing-Machine Company, and tuck-marker No. 17, manufactured by Wilcox & Gibbs' Sewing-Machine Company, both under license from Fuller's own patent, and state, if you please, what substantial similarity there be, if any, between said tuck-markers, respectively, as a tuck-marking device, and the tuck-marking device described in the patent and shown by the drawings and model of Henry W. Fuller
289 and A. W. Goodell's patent of June 5th, 1860: 1st, as to the substantial similarity of mechanism as a whole; 2d, substantial similarity of the component parts; 3d, substantial similarity of the respective combinations and arrangement and form of markers; 4th, substantial similarity of the mode and manner of attaching the same to a sewing-machine so as to be operated by the needle-bar; 5th, the substantial similarity of the adjustability of the same for the purpose of getting the width of tuck.

A. In model 16 the mechanism, as a whole, is widely different from the mechanism in model 4, in construction and principle of operation. The mechanism in model 17 is also different from that in model 4, in construction and operation. In model 16 the notch is operated by a lever of the 3d class. In model 4 the notches or blades are operated by a bar, not a lever. There is a unity of adjustment in model 16; in model 4 there is no such adjustment. In model 16 the relative positions of notch and blade are not changed in attaining the width of tuck; in model 4 the notches and blades are relatively changed to attain such width of tuck. There is no substantial similarity in the two modes

except a notch working on a blade. Model 17, as a whole, is widely different from the mechanism in model 4. There is a unity of adjustment in model 17, and no such unity in model 4. Model 17 has a spring-slot operating upon a spring-point, or a point on a bar which may spring; model 4 has no such arrangement. The plate supporting the slot in model 17 is a curved spring-plate, and supports the blade, which arrangement is wholly different from model 4. The slot and blade might, however, mark cloth similarly to model 4. In model 4 one of the blades operates on an elastic bed of leather; the other blade operates in a notched piece of wood, which is more or less yielding on the blade. The wood and leather would soon wear out in use, and would not be likely, in the hands of common operators, to be of any considerable practicable value. The notches, slots, points or blades, in models
290 16 and 17, being of metal, are a great improvement over the notches and blade of No. 4, and are operative, while the devices in model No. 4 are not believed to be of any practical value. Model 17 is to be attached to the bed of the machine by screw-clamp. Such attachment is radically different from the manner of attachment in model 4, and the operation of a needle-bar on the spring-slot is right the reverse from the operation of model 4. Model 16 is attached directly to the bed of a machine, and no part of it is suspended from the stock-arm of the machine, as is the case in model 4. The mechanism in models 16 and 17, neither as a whole nor in part, could substitute any part of model 4 without reconstruction or invention.

Q. 15*a*. Please state, from your knowledge of mechanics and mechanical devices, and especially of sewing-machine attachments for tucking purposes, whether, in your opinion, a tucker device constructed like model No. 4, of the Fuller patent, would be of any practical value as a tuck-marker, and whether it would be practicable to keep the same in order and to operate with it as a tuck-marker.

A. A model constructed as No. 4 now is, would not be of any practical use for marking cloth.

Further examination herein is hereby adjourned until 10 o'clock a. m., July 10th, 1873.

Examination resumed at 10 o'clock a. m., July 10th, as per adjournment.

Q. 16. State, if you please, if the forms of markers, to wit, a notch and blade, and a point and socket, or their equivalents, or either of them, for creasing or marking cloth, for the purpose of indicating a line of fold of the cloth, in the manufacture of wearing apparel and household goods, or for the creasing or marking of metals, paper, &c., by manufacturers in that line, were known to the arts and in common use prior to the year 1860, within your knowledge and observation And, in this connection, please first state what information and knowledge you may have in respect to the state of the arts upon this subject previous to 1860.

291 A. Prior to 1857 my attention was called somewhat to the manufacture of cloth into garments by seeing a Singer sewing-machine in operation. At that time I was a practical draughtsman, and familiar in working wood, and, to some considerable extent, in working metal, and also with the mechanism generally employed to do such work. Some time in the year 1850, or before, I saw in operation a paper-folding device, sketched and described in a deposition made by me, and filed in this case September 2, 1872. This device was used more especially to fold foolscap paper in three sheets. About the time

that I saw the said Singer sewing-machine, cambrics were laid on a board having a longitudinal groove, and creased by means of an ivory marker or paper-cutter, which was moved on the top of the cloth or cambric, forcing it into the groove; the cloth thus bent would readily fold on the mark. Notches and blades were used 25 or 30 years ago for grooving scythe-blades; such notched part was fastened to a block, and a blade or somewhat sharp instrument was attached to a spring-beam, which struck a succession of blows and creased the metal plate as it was moved longitudinally over the notched mechanism. Notched and pointed dies were in common use at that time, or before, for countersinking sheet metal on one side and raising projections on the other side. Sharp-edged, rotating wheels have been made, by suitable mechanism, to travel over a grooved bed, and marked metal to be bent on the mark so made. Beading and burring tools for grooving and marking metals, bending it, &c., have also been used for 25 or 30 years past, of my own knowledge. Conical points attached to vertical reciprocating bars, for perforating metals, were used in combination with a bed-plate, in the manufacture of nutmeg-graters, 20 or more years since, said bed-plate being provided with an orifice into which the conical point was projected in countersinking, and perforated the tin. These several devices, so far as marking or creasing metals, paper, and cloth, operated on the same principle and by the same mechanism as the notch and blade does in models Nos. 4 and 5, hereinbefore mentioned by me.

292 Q. 17. State, if you please, your means of information and knowledge of the arts in relation to the common use, prior to 1860, *of the use* of a spring for the purposes of lifting an upper from a lower marker in the stamping of official seals and of various manufactured implements, metals, clothing, household goods, and creasing of cloths, in such manufacture.

A. The upper members of stamping and sealing devices were, prior to 1850, lifted off from the lower plate by means of springs after such upper members had been forced down to perform their work. The balance of this answer will be found where I have spoken of a spring-beam and grooving scythe-blades. My means of information is, that I have seen the devices named—I mean the stamping and sealing devices in use and used them, and witnessed the manufacture of scythes frequently prior to the date mentioned. These springs for lifting the upper member of the devices mentioned performed substantially the same function as the spring does in model No. 5 and the spring-arms (proper) in model No. 4, hereinbefore referred to.

Q. 17*a*. State any difference you find between Exhibit 18 and Exhibit 2 X.

A. The only substantial difference is, in 18 the plate which supports the movable plate is fastened to the bed-plate of the machine. In model 2 X, such a plate is fastened to the presser-foot.

The further examination of said witness is adjourned until to-morrow, the 11th inst., at 10 o'clock a. m.

On this 11th day of July, 1873, at 10 o'clock a. m., I proceed with the further examination of said witness, as follows:

Examination of this witness in the case No. 2, above.

293 HENRY W. FULLER AND ISAAC W. BARNUM *vs.* ENOCH S. YENTZER AND WALTER SCATES. } No. 2.

The complainants stipulate that the grounds of complaint of infringe-

ment of the Rose patent, re-issued to Henry W. Fuller, December 1st, 1868, by the above-named defendants, is under the 6th claim of that patent only.

It is further stipulated by the parties that the evidence, models, and exhibits of the complainants and defendants taken in any one of the foregoing suits may be read in either of the others, so far as applicable.

The defendants, in the second case, as hereinbefore stated, offer in evidence, as a part of said witness' examination-in-chief, his affidavit taken and filed in this case September 2d, 1872.

Thereupon the defendants offered in evidence the Rose patent, model No. 10, and tuck-marker, claimed to be manufactured under it, numbered 11, 12, and 15.

Questions to GEO. L. CHAPIN, by defendants:

Q. 18. Look upon claim 6, re-issue of the Rose patent, to Henry W. Fuller, as assignee, of December 1st, 1868, and upon the Rose certified model offered in evidence, marked Exhibit No. 10, and also upon the patents to Enoch S. Yentzer, of April 11th, 1871, and May 28th, 1872, and tuck-marker No. 2, offered in evidence, marked by Mr. Chapin with an X, together with the certified models marked Exhibit 1, and
294 state, if you please, what substantial similarity there is, if any, between the claims of the said several patents and tuck-marker and models, as to the connection together of the upper and lower part, and adjustability of the tuck-creasing mechanism in its relation with a needle of a sewing-machine and the operation thereof by a sewing-machine, and of the substantial differences in these respects, if any.

A. In model No. 10, the mechanism is such that it, as a whole, is moved back or forth when an adjustment is to be made; no part thereof is arranged to be adjusted relative to any other part. Two of the models No. 1 have no unity in adjustment, but one part of the frame-work necessarily has to have its position relative to the other part of the frame-work changed, in order to attain an adjustment to or from a needle. In this respect two models (1, 1) are wholly different in the adjusting mechanism to model 10. Model (2 X) is adjusted similarly to models (1, 1,) and is, therefore, also different from model 10 in its means of adjustment relative to the needle. One of the models, "1," has a compound adjustment, unlike model 10. In this answer I have taken into consideration the mechanism claimed, and not an explanation of claim, as I understood the question.

Model "2 X" and two of certified models "1" are attached to the stock-arm of the machine by means of sockets or presser-feet, and have no permanent connection with the bed-plate of the machine, the attachment being a suspended one, and the adjustment is made by means of a two-part tucker-plate, which is adjustable relative to itself. In this respect they are wholly different from model No. 10, because the latter is to be adjusted by *by* the same set-screw which holds it to the bed-plate of the machine, the bed-plate of model No. 10 being slotted for that purpose. For the remainder of this answer I refer to my affidavit offered in evidence in this case, marked "2d case."

The further examination of G. L. Chapin was continued in case No. 3 in the caption above, of—

295 HENRY W. FULLER AND ISAAC W. Barnum
*vs.*
HERMAN B. GOODRICH. } No. 3.

It is stipulated by the complainants that their claims, or complaints of infringement in this case, are only under claims 1, 2, 5, 6, and 8.

The complainants admit that levers, simple and jointed, were well known to the arts long prior to 1860, and in common use for various mechanical purposes other than tuck-creasers or markers.

The complainants further admit that the needle-bar of sewing-machines, as a means of communicating mechanical power in sewing-machines, was well known in the arts, and in use, long prior to 1860.

The complainants further admit that nippers or pinchers, serrated or smooth, as mechanical devices, were well known to the arts, and in common use, long prior to 1860, except in connection with tuck-creasers or markers.

The defendants thereupon introduced in evidence the affidavit, heretofore taken by the defendants, of George L. Chapin, and filed in this case September 2d, 1872.

They further introduced in evidence the tuck-markers manufactured by H. B. Goodrich, defendant, numbered 13 and 14, and also tuck-marker No. 15, manufactured by Fuller under Rose patent.

Questions to said GEO. L. CHAPIN by the defendants:

296 Q. 19. State, if you please, what substantial similarity there may be, if any, in the mechanism referred to in claim 1 of the Rose patent, re-issued to Henry W. Fuller, December 1st, 1868, and the model Exhibit No. 10, and the mechanism of the model Exhibits Nos. 13 and 14, for forming a ridge or ridges on fabrics.

A. As a whole, there is no substantial similarity between the Rose patent and its model No. 10 and models Nos. 13 and 14.

Q. 20. State, if you please, what substantial similarity, if any, there be between the same mechanisms (I mean the Rose patent and model) referred to in the former question, as to the method of nipping or pinching the fabric to form ridges or creases thereon, and the tuckers Nos. 13 and 14; and if you find any substantial difference between them, please point out particularly wherein it consists, as set forth in the 2d claim of the re-issued Rose patent.

A. There is no substantial similarity in construction or mode of operation.

Q. 21. State, if you please, what substantial similarity there may be, if any, between the combination of the creasing device or devices of a tuck-marker with a jointed lever, as set forth in the 5th claim of the said Rose patent, and the combination of the tuck-creasing device, as shown in Exhibits Nos. 13 and 14, above offered in evidence.

A. In my first deposition in this case I have answered fully as to model No. 13, denying any substantial similarity in combination as compared with the Rose model. I now add that there is no substantial similarity in model 14, compared with the Rose patent and its model No. 10.

Q. 22. State, if you please, what substantial similarity, if any, you find

in the tuck-creasing mechanism set forth in claim 6 of the re-issued Rose patent and the combination with the tuck-marker in the 8th claim of said patent, in relation as to the connection of the upper and lower parts, and being together adjustable in its relation with the needle-bar, as described in the 6th claim; and in relation to having its upper and under parts connected and together adjustable, as to lever and
297 spring, as set forth in the 6th claim of said patent, with the tuck-markers, Exhibits Nos. 13 and 14.

A. The mechanism in the 6th clause of the Rose patent is substantially different from models 13 and 14. The devices in the said claim are together adjustable, that is, there is a unity of movement when an adjustment is made on a sewing-machine, to and from the needle. There is no such unity of adjustment in models Nos. 13 and 14. The parts combined, as shown in the 8th clause of the claim in the Rose patent, are not shown in models 13 and 14.

Q. 23. Look upon tuck-marker manufactured by complainant Fuller, under his Rose patent, now shown you, and marked Exhibit No. 15, and state, if you please, what, if any, substantial similarity there is in it as a tuck-marking device, either as a whole or in its several parts—their combination with the other parts of the device—its mode of attachment to a sewing-machine, and the mode of adjusting the markers in relation to the width of tuck, to or with the Rose model No. 10, heretofore shown you, in these several respects.

A. Model No. 15 is provided with a two-part bed-plate, one part being adjustable on the other, and have their positions changed to attain a different width of tuck. Model 10 has a single bed-plate, and the device, as a whole, is a unity in adjustment, i. e., together adjustable.

In this respect the two devices are wholly unlike, and the mechanism in model 15, as a whole, is materially different from that in model 10.

In model 15 there are two adjustments: one adjustment is made by a friction guide-plate, the other is made by changing the relative positions of the two-part bed-plate, one part of the bed-plate being provided with a long slot for the bridge or nut of the spring-arm to operate in when making such adjustment. Model 10 has no such friction-guide and no equivalent therefor, while model 15 would be inoperative without it; therefore, in the matter of adjustment and friction-guide, model 15 is wholly unlike model 10. The bed-plate in model 15 is not mov-
298 able on the screw which holds it to the bed of the machine, while model 10 is movable on its holding-screw. In this respect, therefore, there is a very wide difference. In model 10 the needle-bar operates a pivoted lever. Model No. 15 has no pivoted lever, but has a bent spring-lever attached to a movable operating plate on a stationary plate. Model 10 has no such arrangement. The jointed lever in model 10 has a spring and serrated jaw attached to it. The spring-lever in model 15 has no such devices attached to it. It is, therefore, wholly different. The pinching in model 10 is done by two serrated jaws operating directly above a bed-plate. Model No. 15 has no serrated jaws at all, and in this respect the two models are wholly unlike.

In model 10 the pivoted lever is attached by means of a spring to a serrated jaw. The spring-lever in model 15 is not attached to anything except to the bed-plate. In this respect models 10 and 15 are wholly unlike. Spring-lever in model 15 could be made no use of, as a part of model 10, and the only like function is that the spring-lever in model 15 is operated by the needle-bar somewhat in the manner as pivoted lever in model 10. Model 15 is provided with a curved push-bar (not a jaw) which is rigidly fastened to the bar of a coiled spring, which, together

with the push-bar, pass through an upright slotted plate, said plate preventing the bar of the spring from rising too high. Beneath the curved end of the push-bar is placed an inclined plate over which the cloth passes, and on which the curved end of the push-bar operates. Just back of the curved end of the push-bar is a recess formed on a plate above the cross-plate, the back part of said recess part forming a stationary shoulder, against which the cloth is impinged by the curved end of a push-bar, operated by means of the curved spring-lever being brought down under the bar of the coiled spring, as is the case when the needle-arm is in operation. The pinching-devices in model 15 are in construction, mode of operation, wholly unlike the mechanism in model 10.

None of the mechanism in model 15 could be made to take the
299 place of any of the mechanism of model No. 10. A skillful mechanic, familiar with Henry W. Fuller's patent, could not, from the description and drawings, make a device, or anything approximating a device, as shown in model 15.

Q. 24. Please state, from your knowledge of mechanics and mechanical devices, and specially of sewing-machine attachments for tucking purposes, whether, in your opinion, a tucker-device constructed like the model No. 10 of the Rose patent, would be of any practical value as a tuck-marker, and whether it would be practicable to keep the same in order and to operate with it as a tuck-marker.

A. As to keeping of it in order, I cannot say. It is certain that the model, as it now is, won't tuck-mark, as I have ascertained by trial. I presume it might be adjusted to act to some extent, but for general purposes it would not be of any particular value to attain different width of tucks.

Cross-examination of said witness on the part of the complainants, by E. B. Barnum, esq., in the 1st case of—

HENRY W. FULLER AND ISAAC W. BARNUM *vs.* ENOCH S. YENTZER AND WALTER SCATES. } No. 1. On Fuller's patent of 1860.

C. Q. 25. Mr. Chapin, what knowledge have you of the art of tuck-creasing, and how was that knowledge obtained?

A. I obtained my knowledge of tuck-creasers by examining the
300 state of the art in the Patent-Office, Patent-Office Reports, and from machine-operators and inventors. I have no means of saying, definitely, how much knowledge I have.

C. Q. 26. When did you first see a tuck-creaser?

A. In 1866 or 1867, I saw tuck-creasers something of the style of model 6. I don't know who made it. It was brought to my office in this city by a gentleman who wanted my opinion as to whether the one he had would be an infringement.

C. Q. 27. Who was the gentleman?

A. I am unable to give his name, as my records of Patent-Office business were burned.

C. Q. 28. Is your knowledge of the art prior to '66 or '67 confined to your researches in the Patent-Office?

A. No.

C. Q. 29. State how it was derived.

A. I don't think I had much knowledge of tuck-creasers prior to '66, except what I may have seen in the Patent-Office Reports.

C. Q. 30. Have you been familiar, personally, with the state of the art since?

A. I have examined the state of the art two or three times since 1866, and have some considerable knowledge of it.

C. Q. 31. So far as you know, who first made an automatic tuck-creaser?

A. I don't know.

C. Q. 32. Are you thoroughly acquainted with the invention of Henry W. Fuller, as described in the specification of his letters-patent dated June 5th, 1860?

A. I understand the invention.

C. Q. 33. Do you understand its principle, mode of operation, and its essential elements?

A. I think that I do.

C. Q. 34. Are you not sure about it?

A. I am sure about the marking-devices and the means to operate them, but I might have to examine the specification to put the cloth through the machine.

C. Q. 35. What are the essential elements of that invention for tuck-creasing?

301 A. The spring-arms, carrying the notches or blades, the bar to which they are attached, the slotted bed-plate supporting the notches or points, and the horizontal bar attached to the needle-arm for operating the spring-arms.

C. Q. 36. Does not the specification provide for the omission of the horizontal bar?

A. No; it don't say anything about the horizontal bar, as I have termed it.

C. Q. 37. Does not the specification provide for the attachment of the upper marker directly to the needle-arm?

A. There is no such provision made.

C. Q. 38. Does not the specification say that that can be done?

A. The last interrogatory is incomprehensible as coupled with the former one.

C. Q. 39. Does not the specification state that the upper marker can be attached to the needle-arm instead of the presser-foot?

A. I don't find any such statement in the specification.

C. Q. 40. What is meant by the language in the specification, as follows: "It will be evident that the marking notch or point *i* or *k*, or both, might be placed directly on the arm *e*?"

A. It means that the inventor contemplated a change in construction of the device without proposing any mechanism to make such change.

C. Q. 41. Would it require invention to make such change?

A. Yes; or entire new construction.

C. Q. 42. Question repeated.

A. It is impossible for me to define exactly what would be invention in that case, inasmuch as I have not yet devised any means whereby such attachment would be made operative.

C. Q. 43. What is invention?

A. That production which requires more than the skill of an ordinary mechanic.

302 C. Q. 44. Look at model 4, and read that part of the specification previously quoted, and the words immediately following them in the same sentence, and state whether an ordinary mechanic could place a marking notch directly on the arm and provide a spring between that arm and that notch or point, without invention.

A. If the attorney means the notch shown in model, I answer no.

C. Q. 45. State why.

A. In the model there is a wooden notch and a leather notch, and means would have to be provided to attain such an attachment. Further than this, said notches, if attached, would be four or five times too short to be of any use whatever. This would also be the case with the point in the bed-plate if that were to be attached to the arm *e*.

C. Q. 46. In the use of the word means, in your previous answer, what signification do you give to it?

A. Mechanism.

C. Q. 47. What mechanism, other than that pointed out in the specification, would be necessary to make the connection between the point *i*, or marker, and that arm?

A. The attorney practically requests me to make an invention, in the above question, which I have not now time to do.

C. Q. 48. Then it would require invention to follow the direction of the specification in making the change referred to?

A. The specification don't give any directions how to make such change. It only says that it may be made.

C. Q. 49. Would it require invention to make that change?

A. I have previously answered this question; but will say I think it would.

C. Q. 50. Do you know whether it would?

A. I can't conscientiously answer the question any more positively.

C. Q. 51. Do you refuse to swear that it would?

A. I refuse to swear positively that it would.

303 C. Q. 52. Assuming that this change is made, state what, in that case, would constitute the essential elements of the Fuller invention.

A. From the drawings and specification, I can't assume that any such change could be made. Therefore I couldn't determine anything about essential elements in an inchoate state, or elements which, perhaps, might present many different forms.

C. Q. 53. Question repeated.

A. The interrogatory is too indefinite to admit of any clearer answer than I have given.

C. Q. 54. Question again repeated.

A. If I should indorse counsel's assumption, I should say there wouldn't be any essential element left. The device would then be wholly inoperative and worthless.

C. Q. 55. Would the bed-plate carrying the lower marker, the arm *e*, carrying the upper marker, be left in case of such change?

A. Yes.

C. Q. 56. State why, with these left, the device would be wholly worthless and inoperative.

A. Because, as I have stated before, that the markers or points, as shown in model, would be four or five times too short to reach the bed-plate; and further than this, only one class of work could be done, because there would be no means, in case they were long enough, to make an adjustment on the arm.

C. Q. 57. Would it require invention by an ordinary mechanic to make the upper notch or point long enough to engage the lower markers, or to arrange the upper notch or point adjustable on the arm *e* in a manner similar to that shown in the bar *g*?

A. The points or notches in the model could not be made long enough by anybody if they were attached to the needle-arm to reach the notches or points in the bed-plate, neither by invention or otherwise. Such notches or points could not be made adjustable on the needle-arm *e* by

any such arrangement as bar *g*, and at the same time be attached to the arm *e*.

304 C. Q. 58. Why could not the points or notches be made long enough?

A. Because they couldn't be stretched long enough?

C. Q. 59. Why could not this notch and point be attached to the arm *e* by the same device employed to attach the spring-arms to the bar *g*?

A. Because it would throw the points and notches into a horizontal position.

C. Q. 60. Why could not this notch and point be attached to the arm *e* by a similar device to that employed to attach the spring-arms to the bar *g*?

A. Because the points would be thrown into a horizontal position, inasmuch as the device spoken of and attached to bar *g* is bent, so that the lower part of it is nearly vertical; that is, the pointed part or notched part is nearly vertical, while the main-spring is nearly horizontal. If the horizontal part be placed vertically, the present vertical part would be horizontal, and therefore useless and inoperative.

C. Q. 61. Would it require invention to so bend that device around the arm *e* so as to permit the upper notch or point to maintain a vertical position?

A. If it could be done at all, it could be done without invention.

(The further examination of said witness is hereby adjourned until to-morrow, the 12th inst., at 10 o'clock a. m.)

Continuation of the cross-examination of said witness this 12th day of July, 1873, as per the above adjournment:

C. Q. 62. In your testimony in these cases, and especially in your cross-examination, thus far, have your answers been based on form and material, rather than substantial similarities?

A. They have been based on the construction of parts and mechanical equivalents, as I found them in the patents and models.

305 C. Q. 63. State what is the principle involved or embodied in Fuller's invention.

A. Automatically marking cloth is what is sought for; the principle to be clothed in mechanism.

C. Q. 64. How is the mark made?

A. By a notch or blade operated by mechanism.

C. Q. 65. How do the creasing-points make the marks?

A. By swaging the cloth into a notch by means of a point or blade.

C. Q. 66. What is the element or characteristic of the cloth which admits of the cloth being creased?

A. Flexibleness.

C. Q. 67. Does this characteristic explain the permanent character of the crease?

A. Not wholly. A part of the flexibility of the cloth is temporarily made inactive by the swaging, and therefore remains set in position.

C. Q. 68. Is not the characteristic which admits of this result rather the stiffness in the material due to starch or dressing?

A. Yes, in part, but not wholly; unstarched goods may be creased.

C. Q. 69. Is it not true that the crease is made by the Fuller device by breaking the cloth, or the stiffness of it, over the blade?

A. The cloth might be cut, but not broken, in the sense of the word "break." Stiffness is a condition of things, and I can't say that a condition could be affected by a blade or notch.

C. Q. 70. Is not flexibility a condition of things?

A. It is.

C. Q. 71. Have you not already stated that the flexibility was affected by the notch and blade?

A. I said that a part of the flexibility of the cloth is temporarily made inoperative by swaging (meaning the swaging of the cloth.) I had no reference to swaging starch or dressing.

C. Q. 72. Is that not affecting the flexibility?

306 A. Yes, indirectly, by first swaging the cloth as the result, not a primary movement.

C. Q. 73. Now, in that same sense of a condition of things, is it not true that the crease is made by the Fuller device by breaking the stiffness of the cloth over the blade by means of a notch?

A. Stiffness, per se, I could not say could be broken. Stiffness of cloth might, perhaps, be broken. But I think the word "broken" could not be properly used to describe creasing cloth, in the sense employed by the attorney. "Swaging" is a much better term to describe the operation of the blades and notches, and does not indicate that the cloth is to be injured, while "breaking" does indicate such injury. Commonly, fabrics are not described as broken, but creased, folded, torn, rent asunder, or cut, &c.

C. Q. 74. Do you understand the sense in which I used the word or words "breaking the stiffness of the cloth?"

A. I don't understand that there is any such technical term, but if the attorney will put on the record what he means by "breaking," I will make a prompt answer.

C. Q. 75. Question repeated.

A. I do not understand there is any sense or inteligible signification in the words "breaking the stiffness of the cloth," as applied to the operation of the notches and blade in the Fuller patent.

C. Q. 76. Did you not state in answer to question 73, that stiffness of cloth might, perhaps, be broken?

A. Yes; but I qualified that by the words, "but I think that the word 'broken' could not be properly used to describe creasing cloth in the sense employed by the attorney. 'Swaging' is a much better term to describe the operation of the blades and notches, and does not indicate that the cloth is to be injured ,while 'breaking' does indicate such injury. Commonly, fabrics are not described as broken, but creased, folded, torn, rent asunder, or cut," &c.

C. Q. 77. What did you mean by the words "the stiffness of the cloth might, perhaps, be broken?"

307 A. I had in my mind that cloth of some kind might, perhaps, be put in such a condition that it would break from hardness or brittleness when bent on too acute an angle.

C. Q. 78. In those words do you anywhere say or intimate that the cloth might be broken, to wit, "stiffness of cloth might, perhaps, be broken?"

A. Yes. I said so in answer 73, but qualified the words in the same answer, and repeated the qualification in answer 76.

C. Q. 79. In the Fuller invention, is not the crease made by doubling the cloth or folding it over the point or blade by the notch?

A. It might be said that the cloth is folded or doubled.

C. Q. 80. Does not the specification speak of an elastic surface or pad as an alternative device to the notch?

A. Yes.

C. Q. 81. Would the employment of this elastic surface or pad in

place of the notch alter the manner in which, or the principle on which, the crease is made?

A. I cannot answer fully. I am not sure that a proper crease in the cloth could be formed by the use of such elastic pad. I have experimented in that regard without satisfactory results. An elastic pad without a notch would involve a new principle in contradistinction to an inflexible notch, but it might, perhaps, answer the purpose. Much would depend on how elastic the pad was.

C. Q. 82. What new principle would be involved in this change?

A. A rebound of the blade or recoil of it would be the result of a blow from it on the elastic pad.

C. Q. 83. What effect would this rebound have upon the creasing, and how would that effect be produced?

A. The reflex action of the blade would not effect the creasing.

C. Q. 84. Would not the crease be made by doubling or folding the cloth over the blade?

308 A. Not wholly. It would be made somewhat by a doubling process, by the blade forcing the cloth down into the elastic bed, forming a crease, a transverse section of which would conform in contour more or less to a transverse section of the blade.

C. Q. 85. Is it not equally true that the crease would be made by a doubling process by the elastic bed forcing the cloth down on to and over a blade?

A. Such would be a reverse operation of the notch and blade to accomplish the same result.

C. Q. 86. State whether the specification of the Fuller patent describes a tucking-device in such manner that a competent mechanic could construct such tucking-device so that when made it would be a practical, working machine, capable of doing what the inventor therein claims it will do.

(Defendants' counsel here states, in relation to this question, that it is not a cross-examination on his 15th question and answer of the direct examination, and he should therefore claim the right to re-examine this witness upon this question of utility of tuckers made generally under the specifications of the patent.

Thereupon the complainant withdraws the question.

The further examination of witness is hereby adjourned until the 14th inst., at 10 o'clock a. m.)

Examination is resumed pursuant to adjournment on this 14th day of July, 1873.

C. Q. 87. State why a model constructed as No. 4 now is wouldn't be of any practical use for marking cloth.

A. Arms *g* and *e* are loose on their bearings and the points and notches don't meet properly. Further than this, it is not believed that a point or notch could be made properly adjustable in the bed-plate, and I do not think that the upper adjustment could be made at all times to meet the position of a notch and blade in bed-plate, inasmuch as any lateral movement of the stock-arms would change the relative position of the blades and notches. The mechanism generally works to a

309 disadvantage in consequence of the compound adjustment. The arms *e* and *g* might perhaps be tightened, but the arm *e* would hardly hold in position by the present means of fastening, so as to operate both spring-levers for any considerable time. It might operate indifferently for a short time. The notch or blade requires adjustment in the slotted plate, and as it would soon be worn by a sliding movement it could not be properly held by friction alone.

C. Q. 88. Does not the specification provide for the permanent attachment of these points to the bed-plate?

A. It says they may.

C. Q. 89. Does the specification anywhere speak of the use of this pencil or similar means for marking tucks?

A. I think not, but it does for quilting.

C. Q. 90. State how you would adjust model 4 to mark a crease for a tuck.

A. It could not be adjusted to mark, unless it should be first repaired or somewhat reconstructed.

C. Q. 91. Is model No. 4, defendant's exhibit, now adjusted as described in the specification to make a crease for a tuck?

A. It is not. The points and notches do not strike each other properly. Further than this, some parts are loose, and in its present condition it couldn't be used to tuck.

C. Q. 92. Are the parts substantially in the positions in relation to the sewing-machine, as described in the specification, when ready to make a crease for a tuck? If not, why not?

A. No. The arm *e* wont operate only one marker. Further than this, arms *g* and *e* must be in rigid positions on the stock-arm and needle-arm, in order to occupy relative positions to a machine when in use.

C. Q. 93. If the arm *e* is made so as to operate both markers, and with the arm *g* made rigid, then are the parts substantially in the positions (as described in the specification) in relation to the sewing-machine, as ready to make a crease for a tuck?

A. Yes, substantially in the position.

310 C. Q. 94. Does the curved guide in Fuller model No. 4 perform the same office as the smoothing-finger in the Yentzer device, Exhibit No. 2 X—3 Z?

A. If you mean the spring-rod *a*, the curved arm might, in a measure, but it is not for the same purpose.

C. Q. 95. State what different purposes they are intended for.

A. Curved arm, in model 4, is to hold the folded part smoothly, as it passes under the presser-foot. Spring-bar *a* is to support a two-part blade, but to be operative, the folded part must run under it, and perhaps may be smoothed by such movement.

C. Q. 96. From your knowledge of the art, who first attached the upper marker in defendant's model No. 2 X to that spring-bar, and when was it done?

A. I first saw said upper marker, I think, in '69 or '70, in the Patent-Office. I have no knowledge as to who made it, except from official reports.

C. Q. 97. Are not sewing-machines always provided with sewing-gauges?

A. Some are not, but they generally are.

C. Q. 98. From your knowledge of the art, when was a gauge first incorporated with an automatic tuck-creaser?

A. The end of the bed-plate, or the end of the curved spring-plate in the Fuller patent, I think, was the first I ever saw.

C. Q. 99. When was a gauge, for the purpose of spacing the width of tuck, incorporated with an automatic tuck-creaser? Who incorporated it?

A. In 1860, in the Fuller patent. In answering this question I have not considered the Wheeler patent.

C. Q. 100. What constitutes such gauge in the Fuller patent?

A. The arm *g*, carrying the adjustable spring-arms, with their points and notches, in combination with the adjustable lower notch or point, perform the functions of a compound gauge, in contradistinction to a simple gauge.

C. Q. 101. Do the features enumerated in your last answer con-
311 stitute a gauge, or operate as a gauge, for spacing the width of tucks?

A. The width of tucks may be determined by manipulating the parts enumerated. I don't mean by this that the tucks could be made by said parts.

C. Q. 102. Please state how the width of tuck is obtained in Exhibit No. 2 X?

A. By sliding one part of a two-part bed-plate on the other part.

C. Q. 103. What are the essential elements of defendant's device marked "Exhibit 3 Z?"

A. A two-part bed-plate, adjustable relative to itself; the spring-arm carrying a conical point; a slot in the bed-plate to operate in, and the seam-guide.

C. Q. 104. Is not that device a compound sewing-machine attachment?

A. Yes; if I may understand the word compound to mean a combination.

C. Q. 105. Why is the seam-guide an essential element of that tuck-creaser?

A. Because, in stitching the folds of a tuck, there has to be some guide to direct the cloth properly over the bed-plate of the machine to attain an even row of stitching, and for the purpose of putting such row of stitches more or less from the edge of the tuck.

C. Q. 106. How was that end attained prior to Yentzer's invention?

A. I state from memory, that in '67 or '68 I saw one or more models, or tuck-creasing attachments, provided with a seaming-gauge or gauges, in my office in this city, but I couldn't say now who the inventor thereof was, but seaming-gauges, I believe, were used in gatherers before that time. It was attained in the Singer sewing-machine, by a single stop or guide, as early as 1856.

C. Q. 107. Do you not know that, in the earlier years of automatic tuck-creasers, the ordinary sewing-machine gauge performed the office of the seamer?

A. I know that such an arrangement is spoken of in the Rose
312 patent, but I never saw any such devices that were of any use as a combined tuck-marker and stitching-gauge.

C. Q. 108. Does the seamer perform any part in the tuck-creasing, except so far as guiding the edge of the fold?

A. In Exhibits 2 X and 3 Z, no.

C. Q. 109. In the Fuller invention, when applied to a sewing-machine, would not the sewing-machine gauge perform the same function as the seamer?

A. I don't think it would, because the bed-plate would appear to prevent such gauge from being attached to the bed of the machine near enough to the needle to be operative.

C. Q. 110. When the Fuller invention is adjusted for tucking, is not its bed-plate out of the way of the sewing-machine gauge?

A. That would depend entirely on how wide the tucks were to be. I should say, however, no.

C. Q. 111. Does the seamer perform any part in the tuck-creasing operation?

A. No.

C. Q. 112. Then does the seamer constitute an essential element of the defendant's tuck-creaser in models 2 X and 3 Z?

A. Yes.

C. Q. 113. Do not the defendant's patents describe it as an independent element of his combined attachment?

A. Yes, in the matter of adjustment.

C. Q. 114. Do they not in use?

A. Yes, without the turner, in felling or making the lapped seam, and edge-stitching, but not when used as a tucker, in model 2 X. It is also used independently when hemming is being done.

C. Q. 115. Does not the defendant's patent, dated May 28, 1872, provide that in case of hemming, felling, edge-stitching, &c., the tuck-creaser is to be removed?

A. It is to be detached.

313 C. Q. 116. When detached, what constitutes its essential elements?

A. Bed-plate, spring-arm, spring-bar, two-part blade and point, in Exhibit No. 2 X; and in Exhibit No. 3 Z, the spring-lever carrying a point, the bed-plate provided with a slot and a spring-bar.

C. Q. 117. State whether there is any substantial difference in principle between the operation of the creasing-points in Fuller's invention and the creasing-points in the exhibits last referred to.

A. The only substantial difference that I see in model 3 Z is, the conical point might divide the threads to some extent. The only substantial difference in model 2 X is that the two-part blade is spread apart by the point.

C. Q. 118. Do these differences change the principle by which the cloth is creased or folded?

A. Only so far as in models 2 X, 3 Z, the threads might be pressed and somewhat divided to temporarily deprive the cloth of its flexibility, while in the Fuller patent there is a vertical pressure and apparently not any division of the threads.

C. Q. 119. Is not, in all three of these devices, the cloth doubled or folded over a point or blade?

A. I don't think folding or doubling expresses it, but I should say it was formed over a point or blade in each case.

C. Q. 120. In Exhibit No. 3 Z do you find a bed-plate carrying or provided with an under marker and an arm or bar carrying an upper marker?

A. I find a spring-lever or arm carrying a point, and a bed-plate provided with a slot or notch arranged to mark or crease.

C. Q. 121. Is the bed-plate carrying the under plate or slot so arranged as to rest upon and be supported by the bed-plate of the sewing-machine?

A. A projecting nib only is required to rest upon the bed-plate of the machine.

314 C. Q. 122. Is the arm or bar carrying the upper marker or point so arranged as to vibrate in unison with a needle when in use upon a sewing-machine, in model 3 Z?

A. Yes; it is so intended to vibrate.

C. Q. 123. In model Exhibit No. 2 X do you find a bed-plate carrying an under marker or blade so arranged as to rest upon or be supported by the bed-plate of the sewing-machine?

A. Yes; the marking end rests upon the bed-plate of the machine.

C. Q. 124. Do you not find in the latter exhibit an arm or bar which carries the upper marker or two-part blade?

A. Yes.

C. Q. 125. Does not the upper marker or two-part blade vibrate in unison with the needle?

A. Nearly so; it does not commence to vibrate so soon.

C. Q. 126. Do you not find in Exhibits 6, 7, 8, 9, 16, and 17 a bed-plate carrying an under marker or blade, or provided therewith, so arranged as to rest upon and be supported by the bed plate of the sewing-machine?

A. Exhibit 6 is provided with such plate. In model No. 7 the bed-plate appears to be attached to the table or to a larger bed-plate. No. 8–9 have such a bed-plate. No. 16 is provided with such plate, and, if I remember correctly, No. 17 is.

C. Q. 127. Do you not find in Exhibits 6, 7, 8, 9, 16, and 17 an arm or bar carrying an upper marker or notch so arranged as to vibrate in unison with the needle of a sewing-machine?

A. Yes.

C. Q. 128. Examine model Wheeler patent, marked "Exhibit 5," and state whether that invention has any mechanical connection with a sewing-machine?

A. It has not, except with the table.

C. Q. 129. State whether that invention has any relation with the needle of a sewing-machine?

315 A. It has not.

C. Q. 130. State whether any means are provided to render it automatic in its operation.

A. No.

C. Q. 131. From your knowledge of the art, was the Wheeler invention ever used for tuck-creasing; and, if so, when?

A. I never saw it used, except as I experimented with it in the year 1872.

C. Q. 132. Examine the letters-patent, or a certified copy thereof, issued to him February 14th, 1860, and state whether the specification thereof in any manner refers to or provides for making a crease in cloth?

A. Yes, where it speaks of marking tuck-folds. It also speaks of measuring and marking tuck-folds and of making pricks or marks on cloth or folds by pressing down on a point. It says the material is marked very rapidly, enabling the operator to sew tucks, folds, and plaits evenly, straight, and rapidly. It provides a point and a soft metallic socket for that purpose.

C. Q. 133. State whether from the language you have just quoted you understand that Wheeler contemplated making a continuous crease in cloth.

A. The language quoted dosen't indicate that he did or didn't.

C. Q. 134. Where did you see the device of a board with a longitudinal groove and an ivory marker or paper-cutter?

A. In Howard, Steuben County, New York.

C. Q. 135. Who made it?

A. I don't know who did make the first one. The school-boys brought one or two into school; the first one was there when I went into school.

C. Q. 136. What were they brought into school for?

A. For folding foolscap paper to form writing-books.

C. Q. 137. Do you know whether they were ever manufactured for tuck-creasing purposes?

A. They were manufactured simply for folding purposes.

316 C. Q. 137*a*. Is there any difference in principle or in essential elements between Exhibit 18 and Exhibit 2 X?

A. I think not. There may be in 18 something to be gained in manipulating the cloth.

Cross-examination of the witness in case No. 2:

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
ENOCH S. YENTZER AND WALTER SCATES.

C. Q. 138. State what is the essential principle involved in the 6th claim of the Rose patent, re-issued December 1st, 1868.

A. The apparent principle is automatically marking tucks by a pinching process, performed by a lever-and-spring mechanism, which is to be put in motion by the power of a vibrating needle-arm; and, further, in the unity of adjustment of the upper and lower parts on the bed of the machine to or from the needle.

C. Q. 139. Do the upper and under parts of the Rose invention always maintain the same relative position to themselves, and, when in use, with the needle of a sewing-machine?

A. The upper parts change their relative positions when in use, but unless they were out of order they would maintain their relative positions to the lower part and would also maintain one position relative to the needle, unless together adjusted to or from it.

C. Q. 140. What essential elements are necessary in a tuck-marker or creaser to embody that principle?

A. To embody that precise principle all the mechanisms as there shown in the Rose patent must be employed.

C. Q. 141. State what you mean by unity of adjustment.

317 A. I use the words "unity of adjustment" in contradistinction to a compound or double adjustment, or, to make it plainer, several mechanisms are, by a single movement, moved precisely the same distance.

C. Q. 142. In tuck-creasers generally what several mechanisms are essential to embody the principle of unity of adjustment?

A. An upper marking device rigidly attached to a lower marking device, when the latter is adjustable on the bed-plate of the machine, or on other part of the machine.

C. Q. 143. Do you find these elements embodied in the Rose invention?

A. I do not, all of them, as described in my last answer, as the bed-plate in the Rose patent has no marker; but this does not prevent the Rose model from having a unity of adjustment.

C. Q. 144. Then the under marker is not an essential element in embodying the principle of the unity of adjustment?

A. It is necessary in some tuck-markers, but it is not in the Rose patent, and might not be in others.

C. Q. 145. Does not the extension-plate, *m*, act conjointly with the pinching-jaws in making the crease?

A. It is intended so to act, as I see by the specification.

C. Q. 146. Are not the jaws in the Rose invention of unequal length, and arranged so as to strike, respectively, close to, and on both sides of, the edge of that extension-plate, *m*?

A. The outer jaw strikes the plate *m*; the inner jaw descends closely to the edge of the plate, and in model 10 is a little longer than outer jaw; but I don't note this distinction in length of the jaws in the patent.

C. Q. 147. In your opinion, in this arrangement, as shown in model 10, does not the edge of that extension-plate, *m*, assist in the creasing action?

A. Model 10 is inoperative, and I cannot say fully. It may. I think it is intended to.

318 C. Q. 148. In the defendant's devices, Exhibits Nos. 2 X and 3 Z, do you not find the elements necessary to embody the principle of the unity of adjustment?

A. No. I find in them a unity of movement, not a unity of adjustment.

Adj'd till 15th, at 10 a. m.

Examination continued on 15th, as follows:

C. Q. 149. State what necessary element to the unity of adjustment is wanting in the models last referred to.

A. Some means to fasten the movable bed-plate independent of its fixed bed-plate.

C. Q. 150. Look at your answer to c. q. 142, and state whether you have there stated that such means is a necessary element to embody the said principle?

A. I did not. I contemplated the slot and set-screw, as in model 10.

C. Q. 151. Does not the bed-plate in Exhibits Nos. 2 X and 3 Z slide in a slot in the lower jaw of the flat gauge-plate described in the Yentzer patent?

A. One part of the bed-plate in said model slides in groove in what I have termed the other part of the bed-plate, and clamped to it by a set-screw.

C. Q. 152. Does what you term the other part of the bed-plate form any part of the tuck-creaser proper?

A. No.

C. Q. 153. Do not the tuck-creasers proper, in models Nos. 2 X and 3 Z, embody the principle of unity of adjustment?

A. Independent of the bed-plates, no; but they embody a unity of movement.

C. Q. 154. Is unity of adjustment obtained when means of fastening the bed-plate at any and all desired points is provided?

A. Yes.

C. Q. 155. Does the precise mechanism of such means affect the result, i. e., unity of adjustment?

A. Yes, in models No. 2 X and 3 Z, but how far such means
319 might be varied and retain the same end, I am not able at present to say. Any mechanism which would properly hold the movable bed-plates to the stationary bed-plate would not produce any different effect as regards the unity of adjustment.

C. Q. 156. Would any mechanism which could properly hold the bed-plate of the tucker proper to the bed-plate of the sewing-machine, or to any other part of said machine at any and all desired points, produce any different effect as regards the unity of adjustment?

A. I think not.

C. Q. 157. Do the upper and under parts of the tucker proper in Exhibits Nos. 2 X and 3 Z always maintain the same relative position with themselves, and when in use together maintain the same relations with the needle?

A. Yes; relative to themselves. To the second clause of interrogatory I say yes; adjustable relations.

C. Q. 157*a*. Is there any difference, so far as unity of adjustment is concerned, between Exhibit 18 and Exhibit 2 X?

A. No; not in the matter of notch and blade.

C. Q. 157*b*. Do you find in Exhibit 18 the elements previously stated by you as essential in embodying the principle of the unity of adjustment?

A. If the attorney means the unity of the notch and blade, I say yes, but if he means the unity of the whole, I say no; for there is no movement of the bed-plate.

C. Q. 157*c*. Is there any difference in the latter respect between Exhibit 18 and Exhibit 2 X?

A. No.

Cross-examination in 2d case concluded.

320 The cross-examination of G. L. Chapin in the case of—

ISAAC W. BARNUM AND HENRY W. FULLER
*vs.*
HERMAN B. GOODRICH

was commenced, as follows:

C. Q. 158. Are you thoroughly familiar with the invention described in re-issued letters-patent granted to Henry W. Fuller, as assignee of Israel M. Rose, Dec. 1, 1868?

A. I think I am.

C. Q. 159. State what are the essential elements of that invention.

A. Serrated pinching-jaws, operated in connection with adjustable slotted bed-plates, supporting an under plate, *m*, and a spring communicating motion to the operating jaw, when a pivoted lever is operated from some power in a machine. These are the mechanical elements the abstract principles of which would appear to be the pinching of cloth to form a crease as it passed over the bed-plate of a machine, said tuck to be of different widths. I don't mean to say, however, that this principle could be made available by the elements enumerated.

C. Q. 160. What is the office or function of those jaws?

A. As I have just stated, to pinch the cloth to form a crease or ridge on which cloth is to be folded. I might now add that a small portion of the cloth would be somewhat folded or doubled provided the jaws would operate.

C. Q. 161. Is not the crease or fold made in the Rose invention by compressing the cloth in a doubled condition between opposing surfaces?

A. I do not understand from the patent that this is the case.

The patent speaks of seizing the fabric and compressing it tight-
321 ly, but just as to how the pinching or creasing is to be done the patent does not describe. A great deal is said about the jaws, but their precise construction, relative length, and their precise operation on or with the plate *m* are not set forth clearly.

C. Q. 162. Do you understand the principle of the creasing action in the Rose invention?

A. Not from the patent, but from the patent and a knowledge of mechanics and experiments, and seeing the model, I think I understand the principle involved in what the attorney terms creasing action.

C. Q. 163. From your understanding so derived, state whether the crease or fold made by the Rose invention is not so made by compressing the cloth in a doubled condition between opposing surfaces.

A. If such crease could be made there would be a very short fold if the cloth were pinched between the jaws by compression in a doubled condition between opposing surfaces.

C. Q. 164. So far as the creasing action is concerned, or so far as pinching a fold or crease in cloth is concerned, would it make any difference in what position the opposing surfaces were placed, provided they did come together?

A. Yes; the opposing surfaces might come together and not gather any cloth.

C. Q. 165. If the cloth by any suitable means was placed between or fed between the two opposing surfaces, then, under the condition mentioned in preceding question, would it make any difference?

A. Yes; a single thickness of cloth might be placed between the jaws; but if a double thickness of cloth were placed between the jaws I should say no, providing the surface pressed the cloth at the point of doubling.

C. Q. 166. State what is the function of the hinge-lever.

A. To communicate motion to a spring which operates the movable jaw and to give a reciprocating motion to both jaws, and as a result operates the spring of the inner jaw.

322 C. Q. 167. State the function of the spring-branch H.

A. It operates the movable jaw and through its attachment operates a spring-lever jaw, and might prevent the parts from being broken, if the power applied should move the lever down too far.

C. Q. 168. When the jaws in the Rose invention have reached the cloth and the creasing action has commenced, for all practical purposes is not the closing of the jaws accomplished by the movement of the outer jaw alone?

A. The whole movement, practically, is made by the outer jaw.

Adjournment until the 16th.

Continuation of examination on July 16th, 1873:

C. Q. 169. State the functions of the serrations, or serrated edges, of the pinching-jaws.

A. It is that the protuberances between the interstices may project a little into the cloth to enable the jaws to get a firmer hold upon it in their downward movement.

C. Q. 170. Is it essential in order to seize the cloth that those edges should be serrated?

A. I think it is. I do not believe that the jaws would get a sufficient hold upon the cloth unless they were serrated or toothed; unless they were sharp enough to get a firm hold upon the cloth; but in the latter case they would cut or injure the cloth, I think.

C. Q. 171. Are there not well-known appliances known to mechanics by which motion could be communicated to the outer jaw as desired, which could be substituted for that purpose for spring-branch H?

A. No; not without reconstruction, and perhaps invention—I am not sure as to invention.

C. Q. 172. State what advance, if any, was made by Rose in his invention in the state of the art at the time of his invention.

A. He provided a complete unity of adjustment, (to or from the
323 needle,) as a whole, and substituted pinching-jaws for notch and point. I have not considered the Wheeler patent in this answer.

C. Q. 173. State what is the essential principle embodied in defendant's machine, marked "Exhibit 13."

A. Laying cloth over a suitable form as it passes over the bed of the machine and forming a crease by a series of concussions.

C. Q. 174. What are the essential elements of that device?

A. A form, a longitudinal gatherer, and spring-lever hammer, with a suitable bed-plate to support the parts and means to determine the width of tuck.

C. Q. 175. Is the *guage* any part or essential element in the tuck-creaser proper?

A. No; not in the absolute means of creasing.

C. Q. 176. What do you mean by the longitudinal gatherer?

A. I think the patent describes it as a "sliding folder."

C. Q. 177. What do you mean by the "form?"

A. The bed on which the hammer strikes, or the part which resists the blow of the hammer.

C. Q. 178. What do you mean by the "spring-lever hammer?"

A. I mean a spring to relieve the concussion of the blow of the hammer.

C. Q. 179. What is the function of the hammer, and what you term the "form?"

A. The hammer is to make a sharp edge on a narrow fold. The form is to support the cloth and resist the concussion of the blow.

C. Q. 180. Is not the crease or short fold made in this device by compressing the cloth in a doubled condition between opposing surfaces?

A. In one sense this might be so. But there is such a wide difference between the meaning of the words concussion and compression, and as the operation is one of concussion, I should decline to say yes. As to doubling in its broad sense, I say yes.

C. Q. 181. Is not compression a necessary consequence of concussion?

324 A. Yes; it is a result of concussion in some cases, but not in all. There may be concussion without any practical compression. In creasing there is compression, otherwise no crease could be formed.

C. Q. 182. Is not concussion itself a necessary result from the contact of two bodies moving at a greater or less speed toward each other?

A. No; unless there is a rebound to a greater or less extent.

C. Q. 183. Is not the concussion an atmospheric phenomenon incident to the meeting of the opposing surfaces, by which the crease is formed?

A. I should rather say it was a result, than phenomenon.

C. Q. 184. Is it not true, then, that whether concussion is produced or not that the crease or fold is made by compressing the cloth in a doubled condition between opposing surfaces?

A. I have already stated that compression was the result of such a blow as would produce concussion. I now say that the crease is formed primarily with such blows as would produce concussion; secondly, by compression as a result. There might be compression without concussion.

C. Q. 185. Please define the meaning of jaws as understood in mechanics.

A. Two opposing surfaces, one of which must be a lever.

C. Q. 186. Do you find in the Rose invention jaws so defined?

A. I do.

C. Q. 187. Do you find in Exhibit 13 jaws so defined?

A. No.

C. Q. 188. Does not the lever carrying the upper opposing surface constitute a lever-jaw; and, if not, why not?

A. No; it is a spring-hammer.

C. Q. 189. Does the fact that a spring is introduced into a lever-jaw destroy its character as a lever-jaw?

325 A. It might or it might not. I couldn't tell till I should see such device as you speak of.

C. Q. 190. Why does the interposition of the spring in device No. 13 deprive the lever-arm, and its opposing surface, of its character as a lever-jaw?

A. If it were a lever-jaw without the spring, it would be with it.

C. Q. 191. What element is wanting in the lever-arm of the opposing surface in Exhibit 13 to constitute it a lever-jaw?

A. It lacks proper mechanism for pinching, in place of a hammer for pounding. Jaws, in mechanism, are not intended to be operated on by reciprocating mechanism, to make such blows as would produce concussion, but hammers, dies, swages, stamps, and punches are. This distinction is general in primary movements. Jaws are intended to pinch, not pound.

C. Q. 192. Would an ordinary vice, when placed in a horizontal position, and the lever-jaw operated rapidly, produce a hammering action?

A. The word rapidly is a relative term. I could not answer definitely on that account.

C. Q. 193. If operated as rapidly as the lever-arm in Exhibit 13 is operated when in use, would it produce a hammering action?

A. Yes; if the jaws come in contact and produce concussions.

C. Q. 194. Would not the jaws of the vice, in such last case, compress any material which might be placed between them?

A. Yes, as a result, but not as a primary action.

C. Q. 195. What difference, then, is there, substantially, in principle, between the lever-jaw of the vice spoken of, and the lever-arm carrying the opposing surface in Exhibit 13?

A. None, inasmuch as the vice spoken of should be properly termed a hammer, if made to operate as the attorney describes it.

Adjournment to 17th inst.

326 Examination continued this 17th July, 1873.

C. Q. 196. Would the vice spoken of still be jaws, as defined by you?

A. Yes; if no change in construction were made to give the rapid motion.

C. Q. 197. Do not the opposing surfaces in Exhibit 13 open and close at intervals, compress the cloth when the feed is inoperative, and release it when the feed operates?

A. The hammer in No. 13 forms the crease when the feed is at rest, and moves away from the cloth when the feed is in operation.

C. Q. 198. Does the hammer alone make the crease, or is it assisted by the under opposing surface?

A. No; it operates in combination with the lower plate and sliding folder.

C. Q. 199. After the sliding folder has performed its office, does not the form assist the creasing action?

A. Yes.

C. Q. 200. Is there any substantial difference in the method of making the crease or short fold, so far as the creasing action alone is concerned, between the Rose jaws and the hammer and form in Exhibit 13?

A. Yes. In model 13 no creasing can be done without the interposition of the sliding folder or its equivalent, while in the Rose model the two opposing surfaces are intended to both gather and pinch the edge of the gather or short fold, so as to crease the cloth.

C. Q. 201. After the cloth is in position between the opposing surfaces in both models, is there any substantial difference in the method of making the crease or fold?

A. I should think not; but note the following: In model 13 the rendering the flexibility of cloth temporarily inactive, so that the cloth will stay creased, is done as a power by a light hammer moving a considerable distance, and does its work partly by momentum, which is attained by a lever of the third order, when the needle-arm is in operation, while in the Rose patent momentum is not at all necessary independent of speed, the movable jaw being a lever of the first order.

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C. Q. 202. Do you not find, in Exhibit 13, a hinged or pivoted lever, whose function is to communicate motion to the upper part of the device No. 13?

A. If by the upper part of the device is meant what I term hammer, I should say yes; a lever of the third order.

C. Q. 203. Do you find in Exhibit 13 unity of adjustment?

A. Yes; also a compound adjustment of seamer.

C. Q. 204. Is that unity of adjustment obtained by means of a slot in the bed-plate, as in the Rose invention?

A. Yes; by a similar slot.

C. Q. 204*a*. Examine model No. 14, and state whether there is any substantial difference in principle and mode of operation between that and model No. 13, except in the means provided for bringing the cloth between the opposing surfaces. If so, what?

A. I can't see any substantial difference, except that noted by the attorney, unless the blade in 14 would perform some function over and above the sliding folder in 13. It operates somewhat differently upon the cloth, but the result is the same.

C. Q. 205. Is that difference such as to affect the principle of the creasing action itself?

A. I think not.

C. Q. 206. Do you find in model 14, with the exception of folder noted, the essential elements of Exhibit 13, or substantial equivalents?

A. Yes; except the sliding folder.

C. Q. 207. Look at models 11, 12, and 15, and state if you do not find in them all the same method substantially, so far as the creasing action is concerned, after the cloth is in position, as in the Rose invention.

A. Assuming that cloth in a doubled condition is properly placed between the nippers in model 11, the creasing would then be done by compression, the same as in the Rose. On the same assumption this would be the case in model 15, and in both cases by push bar, or bars, rather than a lever-jaw. In model 12 a different principle is involved, a forming-blade being interposed between the push-bars.

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C. Q. 208. Please state if, in all those models last mentioned, *if* the creasing action is not obtained by a lever-jaw acting in conjunction with a resisting surface.

A. No; but by push-bars.

C. Q. 209. Look at your answer to question 24 of the direct examination, and state why the Rose model would be of no particular value to attain different width of tucks.

A. Because not provided with a gauge.

(Here the cross-examination of said Geo. L. Chapin closed.)

Whereupon said witness Chapin was re-examined by the defendants, as follows:

Q. 210. Examine your answers numbered 37 to 61, inclusive, of the cross-examination, and state, if you please, if the specifications in the Fuller patent point out or give any intelligible direction how or in what manner the upper markers *i* and *k*, attached to the spring-arm, are to be or can be directly attached to the bar *e*, or needle-arm, or either of them, with or without a spring interposed.

A. No.

Q. 211. Do you know, from your knowledge of mechanics, or could you from such knowledge make that change in this part of Fuller's mechanism without reconstruction or invention?

A. No.

Q. 212. Does the specification of the Fuller patent point out any manner or mode for the permanent attachment of the lower markers to the bed-plate of the tucker; and, if so, where are they to be located upon or fixed upon it?

A. No means are pointed out, and the point of location is not given.

329 Q. 213. State if the specification of the Fuller patent, in reference to the swinging guide, presents any new patentable feature, principle, or mechanism not then known to the art, and in use on sewing-machines prior to the date of that patent.

A. I had not seen such guide used in connection with a tuck-creaser, but swinging guides were in use, in contradistinction to sliding guides, on the bed-plates of sewing-machines prior to that date. As a guide per se, the ones I saw would be equivalents for this one.

Q. 214. Examine cross-questions 120 to 125, inclusive, and your answers thereto, and please state if the parts of said exhibits referred to in said questions and answers are not essentially different in their forms, construction, principle, mode of operation, from the parts in Fuller model No. 4, carrying the markers.

A. Yes, except wherein I have admitted or stated similarities in detail in these and other answers regarding the same parts.

Q. 215. State, if you please, in reference to question 133, and your answer thereto, whether, in your opinion, a tucker device made according to the description in the specification of the Wheeler patent, and the model Exhibit No. 5, would not, in practical use, make a crease, or line equivalent to a crease, for the folding of cloth upon it for the purpose of tucking.

A. Yes; the marks might be made near enough together for that purpose, but the process would be slow.

(Close of redirect examination in case 1 of the witness Geo. L. Chapin.)

Redirect examination of the witness Chapin in the 2d case:

Q. 216. Examine question 139 and questions 149 to 157, inclusive, and your answers, and state if the mechanism of Exhibits 2 X, 3 Z, for the adjustment of the position of the markers to the needle, with the

330 gauge for the width of the tuck, is not essentially different from the adjusting mechanism of model No. 10?

A. Yes, as to model 2 X, 3 Z, except what exceptions there are in said answers given.

(Close of redirect examination in the 2d case.)

Redirect examination of the witness Geo. L. Chapin in the 2d case:

Q. 217. Examine questions 164 to 167 and the answers, and 173 and

answer, and questions from 178 to 189, inclusive, and from 191 to 202, inclusive, and your answers thereto, and state if the forms of the markers and their mode of operation, in Exhibits Nos. 13 and 14, are not constructed upon the principle in a common blacksmith's hammer and anvil, the hammer or upper marker being operated by the needle-bar in the former, instead of the arm of the blacksmith in the latter; and whether, if so, the form thereof, the mode of operating the same, and the mechanical principles involved, are not essentially different from those in the Rose model No. 10.

A. I have already stated that the creasing was done on the principle of hammering instead of pinching, and this statement is considered yea as to the first clause of this question. The mechanism, as a whole, is different. As to detail of construction, the attorney is referred to the answers in question.

Q. 218. Examine question and answer 203, and state if you find the same substantial unity of adjustment of the markers as to the width of tuck in the Wheeler patent and model No. 5, as in the Rose model No. 10?

(Objection as not proper cross-examination.)

A. Yes.

(Signed) GEORGE L. CHAPIN.

Deposition of EDWIN J. CUBLEY, for the defendants, on the three foregoing causes.

Defendants introduced the affidavits of said Cubley, filed in said causes September 2d, 1872.

331 Witness being asked if he agreed with the witness Chapin in the statements made and opinions expressed by him on his direct, cross, and redirect examination respectively, testified as follows:

Direct examination in 1st case:

Ans. to Q. 2. I have examined the several matters referred to in the interrogatory, and as to the facts therein stated by said Chapin, they are true, with the exception that I have not seen the device mentioned by him for making scythes, and I do not know of my own knowledge that such devices, mentioned in answer to 16th and 17th questions, were used longer than sixteen or seventeen years ago; and as to his opinions, I believe them to be correct in every particular.

Cross-examination:

Ans. to X-ques. I have examined the questions and answers, and patents, models, and tuck-markers referred to, and I agree with him wholly with the following exceptions: 1st, in answer to question 26, I first saw a tuck-marker in 1869, made by Henry C. Goodrich; 2d, in relation to answers to questions 25 and 28, I never saw any in the Patent-Office; 3d, in relation to question 97, I think that all machines are provided with gauges; 4th, in relation to question 98, the first gauge I ever saw in combination with a tuck-creaser was in '68, on an H. C. Goodrich tucker, somewhat similar to that on Exhibit No. 9; 5th, in relation to question 99, I answer, I don't know when a gauge was first combined with a tuck-creaser; 6th, in respect to question 100, I don't think there is anything in the Fuller patent or model that could constituted a gauge or cloth-guide; 7th, in answer to question 106, I do not know of a guide combined to a tuck-marker prior to 1869; I have known it separate from a tuck-marker as ordinarily used on a sewing-machine; 8th, as to question 131, I never saw the Wheeler invention used for tuck-creas-

332 ing; 9th, in regard to questions 134 to 137, inclusive, I never saw a grooved board used to mark paper or cloth. I should have made this exception on my direct examination.

Direct examination in 2d case:

Ans. to ques. I have examined the question and answer, and patents, and models, and tuck-markers referred to, and I agree with him wholly with one exception; that is, where he refers to the former affidavits, which I have not examined, and express no opinion upon them.

Cross-examination:

Ans. to cross-ques. I have examined the several matters referred to in the several cross-interrogatories, and the answers thereto, and as to the facts therein stated by the said Chapin, they are true; and as to his opinions therein expressed, I believe them to be correct in every particular.

Examination adjourned to 18th.

Examination continued on 18th, as follows:

Direct examination by defendants in the 3d case:

Ans. to ques. I have examined the questions and answers named, and the patents, models, and tuck-markers referred to, and I agree with him wholly with the exception of the reference to the former affidavits filed in this case, which affidavits I have not examined, and express no opinion upon them; and with the exception of having used the Rose tuck-marker, which I have never tried, and never saw it tried.

Cross-examination:

Ans. to 1st cross-ques. I have examined the questions and answers, and patents, models, and tuck-markers referred to, and I agree with said Chapin wholly, with the following exception: In answer to question 185, I consider jaws opposing surfaces used for compression, whether one of them is a lever or not.

C. Q. 2. Do you find in defendant's models 13 and 14 jaws, as defined by you?

333 A. In 13, I do; in 14, no. The sliding folder in 13 I consider a jaw, which holds the work in place while the hammer acts upon it.

C. Q. 3. Do you not find that in models 13 and 14, that the faces of the hammers, as you term them, and the surfaces of the plates or forms on which they strike, are opposing surfaces, used for compression?

A. Not properly compression, but more properly concussion.

C. Q. 4. In use do they not compress the cloth in a doubled condition between opposing surfaces?

A. Yes; that is the result of the concussion. On a folded edge or doubled piece of cloth, concussion and compression amount to substantially the same thing.

C. Q. 5. Then is there any difference in the creasing action, in principle, between the opposing surfaces of Rose invention and those in defendant's models 13 and 14?

A. As to the result, there is no difference; as to the mode of obtaining that result, there is a difference. The principle is the same in both, so far as the mere action of pinching or compressing the folded goods is concerned.

(Close of cross-examination of Cubley.)

Redirect examination of Cubley:

Red. Q. 1. Look upon interrogatories 1 to 9 inclusive, put to George L. Chapin by the defendants on his redirect examination, and his answers thereto, and the patents, models, and tuckers therein referred to, and state whether you concur with the said Chapin in his opinions therein expressed; and, if not, state particularly wherein you differ.

A. I do.

Red. Q. 2. In the last question of the cross-examination in the 3d case, and in your answer thereto, state if you meant, or wish to be understood, by the identity of principle of creasing by pinching and compressing, to say or express the opinion that there was identity in the principles involved in any or all mechanisms, and their mode of
334 action and operation, in attaining the result of forming a crease; or did you merely mean to say and be understood that you used the word principle as synonymous with result?

A. I mean that I used the word principle as synonymous with result. I would say that compressing, in any way, folded goods, to form a crease, is a principle. There is a very material difference in the principles of construction and mode of operation of the two devices referred to in the former question.

(Signed) EDWIN J. CUBLEY.

Defendants then introduced the affidavits of NORMAN H. SHERBURNE, filed in the three foregoing cases, Sept. 2, 1872.

Said Sherburne was then sworn, and testified as follows:

Having been asked if he agreed with the witness Chapin in the statements made and opinions expressed by him on his direct, cross, and redirect examination respectively, testified as follows:

Ans. to direct ques. I have examined the several matters referred to in the interrogatories, and as to the matters of fact stated in the answers of said Chapin, they are true to the best of my knowledge and belief, with the exceptions following: 1st, in answer to Q.16, I say that I have no personal knowledge of the use of the notch and blade when used in conjunction, for forming a mark on cloth preparatory to folding the same, prior to the year 1860; nor have I any personal knowledge of the use of a point and socket for that purpose prior to that date, but a notch and blade, and the point and socket, have, to my personal knowledge, been used as and for the purpose stated by said Chapin, prior to the year 1857. In reference to the opinions therein expressed, I concur with the said Chapin.

335 Cross-examination:

Ans. to C. Q. 1. I have examined the questions and answers, patents, models, and tuck-markers referred to, and I agree with Chapin wholly, with the following exceptions: To question No. 26, I say that I first saw a tuck-creaser in the year 1868. To question No. 27, I say that I do not know. To question No. 28, I say yes. To question No. 30, I say I have, since 1868; to No. 33, I say yes; to No. 34, I say yes; to No. 100, I say I do not see as any gauge is in any way shown in the Fuller patent, nor do I see as any part of the said device can perform the functions of a gauge; to No. 106, I say that a gauge for guiding the edge of the cloth in a line parallel with the previously-formed fold or line of stitch is seen in the patent to C. D. Wheeler of Feb. 14th, 1860, numbered 27179. The bracket by which the marking device is secured in adjustment in the Wheeler patent performs that function. To ques-

tions Nos. 134 to 137, I say that I have no knowledge as to those questions as answered by Mr. Chapin.

C. Q. 2. Does the gauge in the Wheeler patent determine the width of tuck?

A. It does not determine the distance of the line of stitch from the edge of the fold.

C. Q. 3. Is the width of tuck in the Wheeler patent determined by the movement of the markers?

A. No; it does not, proper; but its location and distance from the edge of the previously-formed fold and line of stitch is formed or obtained by the adjustment of the markers.

C. Q. 4. When the tuck-creaser proper, Exhibit No. 3 Z, is detached from the holding device, does the spring-bar form an essential element in the creasing device?

A. As much so as any part, as the tucker proper would not perform any function without being attached or secured within a holding mechanism; but when the tucker proper is secured in its holding mechanism, the spring is an essential element to insure a uniform width
336 of fold.

C. Q. 5. What function does it perform?

A. It acts to hold the fold and the cloth proper smoothly upon the lower marker or cloth-plate of the machine.

C. Q. 6. Do you find any such device in the Fuller and Rose invention?

A. I do not.

C. Q. 7. Would Exhibit 3 Z crease for a tuck without it?

A. It would.

C. Q. 8. Then is it an essential element of the tuck-creaser proper?

A. It is, when in use.

C. Q. 9. Is it any more an essential element than the seamer? If so, why?

A. It is not, when the seamer is made to perform the function of a smoother.

C. Q. 10. As you find them in Exhibit 3 Z, is the spring-bar any more an essential feature of the tucker than the seamer?

A. It is, in the forming of a crease; for seamers are not generally used for that purpose; but they may be so arranged as to perform the functions of a smoother, and I have seen them so arranged in the Armstrong patent.

C. Q. 11. State whether the smoother assists in the creasing action; and, if so, what function does it perform?

A. It does, to a certain extent, aid in insuring the forming of the crease on which a line parallel with the edge of the previously-formed fold in line of stitch, as it acts to prevent the cloth from passing over the guiding edge of the seamer, or gauge proper.

C. Q. 12. Would not the crease be made parallel to the line of stitch with the smoother removed?

A. It could be made so, but the cloth would have to be secured in position more or less by the hand of the operator, or some other device as a smoother.

337 C. Q. 13. What do you understand by an essential element?

A. That which ensures the position or uniform action.

Redirect examination in 1st case:

Redir. Q. 1. State whether the upper and lower parts and markers in the Wheeler patent could not be substituted for the upper and under

parts and markers in the Yentzer patent, as shown in the models Exhibit 1 and tuck-markers Exhibits 2 X, 3 Z, and 18.

A. The upper and lower parts carrying the markers and the markers themselves, in the Wheeler patent, can be substituted for the parts carrying the markers, and the markers in the Yentzer device.

Redir. Q. 2. And, if you answer the last question in the affirmative, state whether the smoothing-spring in the Yentzer models and tuckers does not secure more perfectly a uniform distance on the cloth between the markers or line of crease and the gauge.

A. It does, as it prevents the cloth from becoming wrinkled.

Recross-examination:

Rec. Q. 1. In substituting the parts in the Wheeler device for the same parts in the Yentzer device would it not be necessary to provide some means to attach the bed-plate of the Wheeler to the sewing-machine?

A. The parts in the Wheeler device which carry the upper and lower markers can be attached to the present bed-plate in the Yentzer device.

Rec. Q. 2. Would not some means have to be provided to connect the upper part of the Wheeler device with some moving part of the machine?

A. No; it may be done by the slot in the upper marker-arm, as in the Yentzer device.

Rec. Q. 3. Do you find any such slot in the Wheeler device?

A. No.

338 Rec. Q. 4. Would it be necessary to provide some means to take up the surplus motion of the needle-arm?

A. No; it would not. The arm carrying the upper marker device would only require to be made slightly thinner and slightly elevated at the end carrying the marker.

2d redirect examination by defendants:

2d Redir. 1. Would it require invention or reconstruction to give greater elasticity to the upper spring carrying the marker in Wheeler device so as to relieve the surplus motion of the needle-arm?

A. It would not require invention to make the change or reconstruction required.

2d Redir. Q. 2. Does it require any invention or reconstruction to put a slot for the needle to pass through the upper spring-arm?

A. It does require reconstruction to a certain extent to form the slot, but it does not require invention.

2d Redir. Q. 3. Could not any ordinary mechanic make the proper change?

A. He could.

Direct examination in the 2d case:

Ans. to Q. 1. I have examined the question and answer, patents, models, and tuck-markers referred to, and I agree with him wholly, except that I have not read the affidavits referred to by Mr. Chapin, and therefore I have no knowledge of that portion of the answer, but in so much of the answer as stated to the present interrogatory by Mr. Chapin he is correct.

Q. 2. State how you would construe the several clauses of claim 6 in the Rose patent.

A. In the 6th clause of the claim all the parts which are mentioned in the specification must be taken into consideration, and used in connection, in a tuck-marker having its upper and lower parts adjustable as to its relation with the needle of a sewing-machine.

339 Q. 3. With that construction or understanding on your part of the claims of the patent, state whether that principle and the principle involved in so much of the parts of Exhibits 2 X, 3 Z, and 18 as relates to the adjustment of the markers toward or from the needle or line of stitch were not known to the art and embodied in mechanism for that purpose at the time of the issuing of the Rose patent, September 22, 1863.

A. They were.

Q. 4. State whether the width and location of tuck was not governed by the adjustment of the markers as a whole, and embodied in the mechanism of No. 15 of the Wheeler patent.

A. The location of the crease and its distance from the edge of the previously-formed tuck is produced in the Wheeler device by the adjustment of the markers as a whole; or, in other words, by moving those portions which form the mark toward or from the previously-formed line of stitch, or toward or from the parallel sides of the gauge against which the edge of the first-formed fold passes, as in the Yentzer device.

Q. 5. State whether the same principle, substantially, is not embodied in the mechanism and adjustment of it in model No. 10, as to the needle or line of stitch, with the exception of the gauge formed by the bracket as a guide.

A. It is; that is, so much of it as relates to the adjustment of the markers toward or from the edge of the previously-formed fold or line of stitch.

Adjournment from 18th to 19th.

Cross-examination:

Ans. to C. Q. 1. I have examined the several matters referred to in the several cross-interrogatories and the answers thereto, and as to the facts therein stated by the said Chapin they are true, and as to his opinions therein expressed I believe them to be correct in every particular.

C. Q. 2. Examine your answer to question 3 of your direct-examination, and state where the principle therein referred to was embodied in mechanism as therein stated.

340 A. It is in the arm carrying the upper marking device and the plate holding the lower marking device, both being connected and capable of being moved together at one and the same time, and by one operation, toward or from the line of stitch or edge of fold previously made in the Wheeler patent.

C. Q. 3. Please state whether in the Wheeler patent there is any adjustment toward or from the needle.

A. There is no adjustment from the needle, but there is from the previously-formed line of stitch in the Wheeler.

Direct examination of Sherburne in the 3d case:

Ans. to Ques. 1. I have examined the questions and answers named, and the patents, models, and tuck-markers referred to, and I agree with him wholly, except in answer to question 22. I say that the several mechanical elements embodied in the 6th clause of claim of the Rose patent are substantially different from models 13 and 14. The elements in the 8th clause of the Rose patent are together adjustable; that is to say, the upper and lower portions of the markers are capable of being moved toward or from the needle or line of stitch at one and the same time and by one and the same operation, but with such adjustment the entire mechanism is moved.

In the models 13 and 14 there is no such combination of parts shown as set forth in the 8th clause of claim in the Rose patent, but the arm carrying the upper marking device and the plate holding the lower marking device in models 13 and 14 are connected, and are capable of being moved toward or from the needle or line of stitch at one and the same time and by one and the same operation, but with such adjustment the entire mechanism is not moved as in the Rose patent; therefore models 13 and 14 are substantially different from the parts embodied in the clauses of claims in the Rose patent.

Q. 2. State how you would construe the several clauses of claim 6 in the Rose patent?

341 A. In the 6th clause of the claim all the parts which are mentioned in the specification must be taken into consideration and used in connection in a tuck-marker having its upper and lower parts adjustable as to its relation with the needle of a sewing-machine.

Q. 3. With that construction or understanding on your part of the claims of the patent, state whether that principle and the principle involved in so much of the parts of Exhibits 13 and 14 as relates to the adjustment of the markers toward or from the needle or line of stitch were not known to the arts and embodied in mechanism for that purpose at the time of the issuing of the Rose patent, Sept. 22, 1863?

A. They were.

Q. 4. State whether the width and location of tuck was not governed by the adjustment of the markers as a whole, and embodied in the mechanism of model No. 15 of the Wheeler patent.

A. The location of the crease and its distance from the edge of the previously-formed tuck is produced in the Wheeler device by the adjustment of the markers as a whole; or, in other words, by moving those portions which form the mark toward or from the previously-formed line of stitch, or toward or from the parallel sides of the gauge against which the edge of the first-formed fold passes, as in the Yentzer device.

Q. 5. State whether the same principle, substantially, is not embodied in the mechanism and adjustment of it in model No. 18, as to the needle or line of stitch, with the exception of the gauge formed by the bracket as a guide.

A. It is; that is, so much of it as relates to the adjustment of the markers toward or from the edge of the previously-formed fold or line of stitch.

Cross-examination in 3d case:

Ans. to C. Q. I have examined the questions and answers, and patents, models, and tuck-markers referred to, and I agree with the said Chapin wholly, with the exception that as to question 209 I say that I

342 have examined Mr. Chapin's answer to question No. 24, and find the same correct; and in answer to question 209 I would say that the Rose patent would be inoperative without a gauge, and would not, for a further reason, be of any practical value, to wit, the arrangement of the stationary jaw is such as to draw the cloth tightly over the tongue, thus preventing the movable jaw from seizing the same.

Redirect examination by defendants in all the cases:

Red. Q. 1. Look upon interrogatories 1 to 9 inclusive, put to George L. Chapin by the defendants on his redirect examination, and his answers thereto, and the patents, models, and tuckers therein referred

to, and state whether you concur with the said Chapin in his opinions therein expressed; and if not, state particularly wherein you differ.

A. I do concur.

(Signed) NORMAN H. SHERBURNE.

Ex. No. 19.—J. O.

WASHINGTON, D. C., *Oct.* 12, 1868.

PATENT-OFFICE LETTER OF REJECTION.

H. W. FULLER, (ass'r by mesne ass't,) Earle H. Smith.

EXAMINER'S ROOM No. 7.

The application above referred to has been considered. A portion of the description on page 8, from lines 9 to 15, and from the word "it," 21st line, to end of 23d line, must be erased, as the matter therein contained is *to* in the original specification, model, or drawing, and is an enlargement of the case. The first clause of claim, as now broadly drawn, is considered equivalent to a claim for forming a ridge or crease in a fabric by mechanism, rather than by hand. Ladies, in working fabrics, often pinch the same in ridges before hemming, and doing this by mechan-
343 ism rather than by hand is not patentable. The clause of claim should read, "The mechanism substantially such as herein described for forming a ridge or ridges on fabrics to be afterwards folded on the line of such ridges. The 4th clause of claim for so combining mechanism that a certain action shall follow, is broader than can be allowed, or the law warrants, and an amendment is suggested to that clause. The 6th, 7th, and 8th clauses of claim are not in patents to Fist, Feb'y 11, 1862, and Feb'y 12, 1861. Fist's guides may be attached to a sewing-machine. They have upper and lower parts having an equivalent relation, as described by applicant, and they have guides. The fact that the device for forming the creaser in these cases differ' from those shown by applicant does not make these clauses patentable.

There are some clerical errors to be canceled in the specification, noted in pencil, and amendments are also suggested to 2d, 3d, 4th, and 9th clauses of claim, that will, it is thought, more accurately define the invention, and render them admissible.

G. W. GREGORY, *Ex.*

Ex. No. 20.—J. O.

WASHINGTON, D. C., *Oct.* 16, 1868.

H. W. FULLER,
(Care of Earle H. Smith.)

PATENT-OFFICE LETTER OF REJECTION.

EXAMINER'S ROOM No. 7.

In the matter above referred to, in compliance with your request of Oct. 13, 1868, the specification above referred to is herewith returned.

Also find herewith an official circular, to the provision of which your attention is particularly directed.

G. W. GREGORY, *Ex.*

344 Ex. No. 21.—J. O.

WASHINGTON, D. C., *Oct.* 27, 1868.

H. W. FULLER, ass'r E. H. Smith.

EXAMINER'S ROOM No. 7.

PATENT-OFFICE LETTER OF REJECTION.

In the matter above referred to, the 7th clause as amended is considered to be fully included in the 6th, as the plate *m* is the lower part of the creasing device; and further, First, Feb'y 12, 1861, marks on front of the needle-presser and feed, and a broad claim could not therefore be granted for an arrangement of the creasing or marking device in such relation with these parts, and if the 7th claim was drawn to cover such an arrangement, the patent to First will answer it. The Office will not object to the allowance of the claim when the 7th shall have been erased.

G. W. GREGORY, *Ex.*

345, 346 And in the first six pages of a certain other printed book, entitled "History of Tuck-Creasers," and referred to in the evidence contained in the printed book first above mentioned at pages 52 and 53, and made a part of the same, but subject to the objections of defendants expressly noted on page 53 of the printed book first above mentioned, which said six pages are also annexed to this certificate and made a part hereof.

*History of tuck-creasers.*

347 HISTORY OF TUCK-CREASERS.

Long before 1860, Henry W. Fuller was engaged at New York in the manufacture of ladies' and children's undergarments, and while engaged in such manufacture the necessity of some means of tucking cloth automatically became apparent.

A long series of experiments resulted in the conclusion that it could be done by creasing a fold in cloth on a sewing-machine while actually sewing, by forcing the cloth over a point or blade with a notch or elastic pad suitably arranged and connected with the machine.

This conclusion was embodied in a device similar to that described in his specifications for the 1860 patent, and which device was used for a long time secretly behind locked doors, by which an advantage was obtained over parties engaged in like manufactures.

In 1859 Fuller concluded to patent his device, and accordingly applied for and obtained letters-patent, dated June 5, 1860, a copy of which is to be found on page 42 of the appendix.

This was the first automatic tuck-creaser ever patented, and, so far as is known, the first ever made, and has ever since been known as the "notch and point tucker."

After obtaining his letters-patent in 1860, Fuller abandoned his manufacturing of underclothing and devoted himself to the introduction of his tucking invention which he then believed, and as has since been demonstrated, was of great value.

During 1860, 1861, 1862, 1863, and 1864 he not only labored to intro-

duce his invention, but worked assiduously to improve his device, to overcome the obstacles which he himself met, and which sewing-machine men found in the practical use of it, and the result of his labors are apparent in the numerous tuckers he placed upon the market, as well as the progress toward perfection which each succeeding one exhibits over its predecessors. His efforts to introduce it were also greatly retarded by the high price of cotton goods consequent upon the war, which rendered tucking an expensive trimming.

348 The entire novelty of the invention, and the difficulties which all new departures in mechanics necessarily involve, made his labors not only severe, but the expenses heavy, and he almost immediately found himself not only struggling with the ordinary obstacles on an untried field, but embarrassed pecuniarily. All his time, as well as every dollar he could earn or borrow, was devoted to that one object for several years, and although large numbers of the tuckers were sold, at the end of seven years' earnest and manly struggle he found himself largely in debt, all incurred in this enterprise and the necessaries of life. So great indeed was his pecuniary embarrasment that, in 1865, having applied for letters-patent for an important improvement and paid the initial expense, when the patent was allowed he was unable to pay the final fee, and a patent which would now be of great value was forfeited and lost.

In fact, it was not until 1870 that he was enabled to make anything over his expenses and pay his debts incurred in the tucker business.

In order to maintain himself and keep up his experiments, he was obliged in 1863–'4, to part with shop-rights under his 1860 patent to the Wheeler & Wilson Sewing Machine Co., Singer Sewing Machine Co., Grover & Baker Sewing Machine Co., Willcox & Gibbs Sewing Machine Co., and Planer & Keyser Sewing Machine Co., for which he received in the aggregate $2,500, a totally inadequate compensation, as will be seen by the fact that the estimated number made and sold by these companies, under these licences, aggregates to the present time 645,000, on which the profit to them cannot have been less than $483,000.00.

For a period of six years, or up to 1866, Fuller and his licensees were the only parties who made and sold tuck-creasers in the United States, and then the first infringement was made by Henry C. Goodrich, who commenced the manufacture and sale of what is well known now as the "Goodrich notch and blade tucker," involving with his improvement the Fuller invention of 1860.

A suit was promptly commenced against him in the United
349 States circuit court for the northern district of Illinois, and a motion made for a preliminary injunction on affidavits, which will be found in appendix, pages 1 to 23, inclusive. As will be seen by reference to these affidavits, the witnesses represent all the well-known sewing-machines manufactured at that time, and in these affidavits place Fuller's claim to priority beyond question, and also tell the story of his struggles.

A final decree was granted by his honor Judge Drummond, and entered in that suit, restraining the defendant from making his tucker, on February 4, 1868. (See appendix, page 24.)

On the application of said Goodrich a license, exclusve in its nature, was given him, under which he has continued the manufacture of his tuck-creaser, and up to the present time, March 1st, 1873, his sales aggregate 483,408 tuckers.

In 1868 the second infringement was made by Smith C. Boughton, of

Troy, New York, in an attempt to manufacture a tuck-creaser which employed the notch and point feature of Fuller's 1860 patent.

Boughton was enjoined by decree of the United States circuit court for the northern district of New York, entered March 19, 1869. (See appendix, page 27.)

The third infringement of Fuller's 1860 patent was made by Sibley & Stoops, Judd & Powell, and others, of Philadelphia, who engaged in the surreptitious manufacture of an imitation of the Goodrich tuck-creaser, licensed by Fuller.

They were detected, as shown by the affidavits to be found in appendix, pages 34 to 38, and were restrained by decree entered in a suit in the United States circuit court for the eastern district of Pennsylvania. (See appendix, page 39.)

In addition to the decree they were compelled to surrender a large amount of tools, stock, and finished goods, and to pay $4,000, and were also arrested and prosecuted under the trade-mark laws of Pennsylvania.

The fourth and last infringement of Fuller's 1860 patent was made by E. S. Yentzer & Co., of Chicago, Illinois, who first commenced the manufacture of an ordinary notch and point tucker, and shortly
350 changed it to a spring notch and blade, an imitation of a device of Fuller's, made and sold by him in 1865.

Suits were promptly commenced against them in the United States circuit court for the northern district of Illinois, and are now pending.

These, so far as known, are the only infringements which have been carried on, except surreptitious manufactures, which have been conducted with such secresy as to defy detection.

*The Rose patent of* 1863.

In or before 1863, one Israel M. Rose, in the employ of the Willcox & Gibbs Sewing Machine Co., in New York, invented a new method of marking a crease in cloth by what is known as the pinching process, and also embodied with it important improvements in the mechanism of a tuck-creaser, independent of the creasing devices.

This invention was assigned to James Willcox, to whom letters-patent was issued Sept. 22, 1863, which letters-patent was subsequently assigned to the said company.

The Willcox & Gibbs Company, however, preferring the notch and blade device of Fuller, did not make the Rose tuck-creaser, and Fuller did not know its nature until as hereinafter stated.

This patent was the second in point of time ever granted for a vibrating tuck-creaser on a sewing-machine.

This invention of Rose made a crease by means of jaws, hinged together and opening and closing at intervals, something after the manner of a pair of pincers, which seized the cloth and pinched a ridge in it.

In the operating mechanism it also improved on Fuller of 1860, by connecting all the parts together and producing a device which required but one attachment and one adjustment with reference to its relations to the needle or line of seam. It also involved other improvements in details of construction which are particularly described in the letters-patent, which will be found in appendix, page 47, as re-issued.

351 The improvements made by Rose, especially in the operating mechanism, were such an advance in the art that nearly all of them were at once applied to and have ever since been used in nearly

all vibrating tuck-creasers, whether operating by the pinching or notch and point process.

Shortly after the invention of Rose, Henry W. Fuller discovered his method of pinching, which is now known as the "diagonal thrust," and thenceforward devoted his time and labor to the development of this device.

This was put in shape for the market and brought to the notice of the trade in 1865, when, on submitting it to the Willcox & Gibbs S. M. Co., he was met, greatly to his surprise, by the Rose patent.

Finding that he was covered by Rose, although his pinching surfaces were different in construction and mode of operation, he pleaded with the company his originality in tuck-creasing, his labors in that line, the fact that they had obtained rights under his 1860 patent for a mere song, and his poverty, which was well known, and asked that they should sell him the Rose patent and give him a long time in which to pay for it.

Recognizing the force of his appeal, they acceded to his request, and after great effort he secured loans of money by which he was enabled to make the payments, and January 10, 1868, obtained a conveyance of the Rose patent, with the exception of a shop-right reserved by the company.

This enabled him to go on with his pinching tuck-creaser, and having obtained letters-patent for his device, dated March 19, 1867, which will be found in appendix, page 53, he devoted his entire time to the perfecting *to* his invention; and the result of his labors are shown in letters-patent issued to him dated respectively, May 11, 1868, appendix, page 64; May 19, 1868, appendix, page 58; April 13, 1869, appendix, page 68; March 14, 1871, appendix, page 73; and August 13, 1872, appendix, page 76; all of which were for improvements resulting from practical experience, severe labor in experiment, and the outlay of a large amount of money.

352 Henry W. Fuller, in addition to his labors in making improvements, has also been engaged since 1865, when he first entered in the market, to the present time, in the manufacture and sale of his pinching tuck-creaser, large quantities of which are in use all over the United States, and are especial favorites among manufacturers of ladies' and children's underclothing, on account of their durable quality and thoroughness of execution.

The first infringment upon Fuller's rights under the pinching patents was made by John C. Jensen, of Chicago, who commenced in 1870 the manufacture of a tuck-creaser embodying the altogether adjustable feature of the Rose patent, the diagonal thrust of the Fuller patent of 1867, and the detachable-point feature of the Fuller patent of 1868.

He was promptly enjoined under those three patents, and ceased the infringement; which, with other parties, was recommenced in 1871, when suits were again promptly commenced in the U. S. circuit court for the northern district of Illinois, and the motions for injunction were pending when the October fire at Chicago swept out of existence both the infringement and the suits.

The manufacture of these infringing tuck-creasers has ceased.

The next infringements were made by Henry B. Goodrich, at the city of Chicago, Illinois, who made a pinching-creaser, and E. S. Yentzer & Co., at the same place, who made a notch and blade creaser embodying the altogether adjustable feature, or, in other words, the connection of the upper and lower parts of the device, so as to be altogether adjustable with reference to the needle or line of seam.

These parties were promptly sued, and motions made for preliminary injunctions, which are now pending in the U. S. circuit court for the northern district of Illinois.

The scope of the Rose patent of 1863 has been thoroughly demonstrated by the repeated rejections of the Patent-Office of a large number of patents which have been held by the office to be anticipated by Rose.

353, 354 And in the exhibits, models, machines, letters-patent, and documents referred to and described in said evidence, all which are to be produced by the parties respectively, who exhibited the same before me in the said circuit court upon the hearing of the said appeals, in the said Supreme Court, and are there to be identified by admission of the opposite party, or by affidavit, as occasion may require, pursuant to the stipulation of the parties in that behalf, and in the affidavit of George L. Chapin, Edwin J. Cubley, and Norman H. Sherburne, which are referred to in their depositions respectively, and made part of the same, and copies whereof are hereunto annexed and made part of this certificate; which said printed book of evidence, and said six 355, 356 pages of said history of tuck-creasers, and said exhibits and said affidavits are respectively to be deemed and taken as duly identified and embraced within the record of the causes aforesaid for all the purposes of the hearing of said appeals in said Supreme Court.

In testimony whereof, at the request of said appellants, who were complainants in the court below, by their counsel, the said appellees, defendants in the court below, by their counsel, assenting thereto, I have hereunto set my hand and seal, at Chicago, in the district aforesaid, this 18th day of September, A. D. 1874.

THOMAS DRUMMOND, [SEAL.]
*Circuit Judge.*

(Endorsed:) Filed Sept. 19, 1874. W. H. Bradley, clerk.

357, 358 *Affidavit of G. L. Chapin, referred to in the foregoing certificate, case No. 1.*

Circuit court of the United States, northern district of Illinois.

HENRY W. FULLER
*v.*
ENOCH S. YENTZER AND WALTER SCATES. } In chancery.

Affidavit of G. L. Chapin in the above-entitled cause.

STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

G. L. CHAPIN, being duly sworn, deposes and says that he is about forty years of age, that he is a practicing patent attorney and patent solicitor, and is a professional expert, also a practical mechanic; that he has been engaged as such attorney, solicitor, and expert in 359, 360 Chicago for more than seven years; that he is familiar with sewing-machines, and with their attachments now in common use; and especially so with tuck-markers, gaugers, gatherers, pleaters, creasers, &c. Deponent further says that he has carefully examined the patent issued to Fuller & Goodell June 5, 1860, No. 28633, for tuckers for sewing-machines, and the models marked "E. S. Yentzer," to which patent commissioner's certificate was attached June 5, 1872. The

models are marked "E. S. Yentzer, Ottowa, Illinois." The Fuller and Goodell patent is for marking cloth or creasing it, as it passes over the cloth-plate of the machine, for the purpose of forming a guide on which the cloth may be folded. The direct means for accomplishing this consists, first, of a pencil or similar device which has given to it a vertical reciprocating movement, so that it will strike the cloth
361, 362 with the downward movement of the needle-bar and make a mark on the cloth. The Yentzer models show no such device, nor any equivalent therefor; no coloring-matter being left on the cloth. The second device shown in the Fuller and Goodell patent consists of a smooth-edge marker, which is considerably wider than it is thick, shown at i, figure 3, in said patent. The inventor says that it is chisel form. This marker is made to have a vertical reciprocating motion with the needle-bar, and strike the cloth and force a portion of it down into what the inventor calls a "leather," which is a separate piece, and as shown in model with commissioner's certificate of June 15th, 1872, attached. It is of elastic substance. Now, no such leather is shown in the Yentzer models, nor is there any equivalent therefor. Nor is there any chisel-form marker such as is shown in the Fuller and Goodell patent.
363, 364 In the latter patent there is a frame suspended above the cloth-plate of the machine to support the spring-arms of the markers, which are struck by a horizontal bar fastened to the needle-bar of the machine to force the markers on to the cloth so as to produce an indentation or crease. No such frame is shown in the Yentzer models, nor can such a horizontal bar be used therewith. In the Fuller & Goodell patent the plate which supports the leather, over which the cloth passes, is provided with a slot for adjusting the leathers to the width of the nick to be made. The spring-arms of the chisel-form markers are adjustable on a horizontal bar to correspond to the adjustment of the "leathers" in the slot, but as no leathers are used in the Yent-
365, 366 zer's models no such slot is made, nor are there any horizontal bars on which the spring-arms of chisel-form markers are to be adjusted, nor any equivalent therefor. The crease in the Fuller and Goodell patent is formed by bruising or binding the fabric, and thus destroying, in a measure, its elasticity by forcing it down into an elastic bed or leather. The Yentzer models are constructed widely different from complainant's device, as will be seen from the following description: They consist of a bed-plate which is fastened to the machines by screws, and to which is attached spring-arms of suitable length to bring the marker the proper distance from the needle; this marker consists not of a chisel-form device, but a round sharp point or an inverted conical point, (more properly,) which pe'forates the cloth with indentations corresponding in distance apart with the needle's perforat'ons.
367, 368 The cloth thus operated upon rests on the aforesaid bed-plate which is provided with a hole through it to allow the point to pass through the cloth.

The operation of the Yentzer device is as follows: The conical point pe'forates the cloth and separates the fibres of which it is composed, and consequently so weakens it for the time being that it may be readily folded to form a tuck. Fuller and Goodell's tuck-marker forms a crease by a succession of blows struck on the cloth resting on an elastic bed as by a bruise, but the work is done on the Yentzer models by seperating the fibre and reducing its strength on a line of the pe'foration. The only real mechanical identity found in the devices, made under the two patents, is the fact that they derive their power from the needle-bar.

Deponent further says that creasing devices are old, and that
369, 370 one delineated on sheet X, a part of this affidavit, was in public use twenty years since or more. A is a table; B is a guide; C is a groove in the top of the table. The operation is such that when a sheet of paper, E, is placed on the table and against guide B, a smooth-edge implement D may be used to press the paper into the gro've, thus forming a crease in the paper for the convenience of folding it.

Deponent further states that he has examined a patent granted to C. D. Wheeler, Feb. 14, 1860, No. 27179, a prior patent, provided with a bed-plate in which is a notch to receive a sharp conical point fastened to a spring-bar or arm operating above the bed-plate, and marking the cloth substantially the same manner as is done by the Yentzer devices and Fuller and Goodell devices. The notch, however, in the
371, 372 Wheeler patent, does not pass through the bed-plate, and in this regard it is more like the Fuller and Goodell patent than like Yentzer's device at issue. C. D. Wheeler in his patent uses soft metal for forming a notch to prevent injury; in this regard it fully anticipates complainant's invention; marking, therefore, on cloth to form a crease was an art publicly known prior to either complainant's or defendant's devices.

G. L. CHAPIN.

Subscribed and sworn to before me this ninth day of August, A. D. 1872.

[SEAL.] D. HARRY HAMMER,
*Notary Public.*

(Endorsed:) Filed Sept. 2d, 1872. Wm. H. Bradley, cl'k.

373, 374 *Affidavit of N. H. Sherburne, referred to in the foregoing certificate, case No.* 1.

Circuit court of the United States for the northern district of Illinois.

HENRY W. FULLER
*v.*
ENOCH S. YENTZER AND WALTER SCATES. } In chancery.

*Affidavit for defendants.*

STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

N. H. Sherburne, being duly sworn, deposes and says that he resides in Elgin, Illinois; that he is a solicitor of patents and a practical mechanic; that he has an office in Chicago, Illinois; that he is thoroughly acquainted with the art of sewing-machines, their mechanism and attachments; that he has been examined as an expert in patent cases.

375, 376 Deponent further says that he has examined and is perfectly familiar with the patent issued to H. W. Fuller and A. W. Goodell, June 5, 1860, No. 28633, for a mechanism for marking cloth in sewing-machines, and that he has also examined, and is perfectly familiar with the model of tuck-marking attachments to sewing-machines marked "E. S. Yentzer," to which is affixed the certificate of the Commissioner of Patents, dated June 5th, 1872, and for which device a patent was issued to the said E. S. Yentzer, April 11th, 1872; that the Fuller and Goodell device is for forming a crease or ridge on the upper

and lower surface of the cloth as it is passed over the cloth-plate of the machine for the purpose of forming a guiding-line on which the cloth may be folded. A pencil is also attached to this device, and so
377, 378 arranged as to form a line of dots on the upper surface of the fabric, to be followed by the line of stitch in quilting. In the Yentzer device, the mark forming the guiding-line for turning the fold is made by perforating the fabric, so as to slightly move the fibres of the same. The Fuller and Goodell device consists of a mechanism embodying the following mechanical parts, viz: A flat metal plate which is attached to the cloth-plate of the machine. In this plate is formed a longitudinal groove, within which is fitted two movable blocks, one of which is provided with a metal blade extending upward from its upper surface; the other block is provided with a groove formed in its upper end, within which is permanently secured a piece of leather or other elastic substance. A bar is attached to the shank of the presser-
379, 380 foot and extending outward at right angles to and above the metal plate. To this bar is affixed an arm which extends backward horizontally over and in the direction of the length of the plate. To this arm is affixed two moveable spring-arms, which extend transversely over the plate to and over the moveable blocks. One of these spring-arms is provided with a socket within which is fitted a wooden die having a groove formed in its lower end, which corresponds with the blade affixed to the block; the other spring-arm has its end bent down, and forming a blade arranged in a position to come in contact with the leather affixed within the block over which it rests. A horizontal arm is attached to the needle-arm, and extends backward over the spring-arms, and in such a manner as to bear upon said spring-arms
381, 382 when moved downward by the descending movement of the needle-arm. This device is operated by passing the cloth over the plate and blocks, and by the descending movement of the needle-arm the arm attached thereto is brought in contact with the spring-arms, depressing the same, which with one arm pinches the cloth between the die and block, the blade therein forcing the fabric into the groove in the die, which forms a ridge in the upper surface of the same, and with the other arm the downward beat portion thereof, forcing the cloth into the groove formed in the leather, pinching the same therein, which forms a ridge on the opposite or lower surface of the cloth. In this device a clasp or pencil-holder is adjustably attached to the arm affixed to the needle-arm; this pencil is so arranged as to form a line of dots upon the fabric, as the same is depressed by the needle-
383, 384 arm, forming a line to be followed by the needle when quilting, not for marking a line to guide the fold.

The Yentzer device is found to consist of the following mechanical parts, viz: A base-plate which is attached to the cloth-plate of the machine by means of a thumb-screw on the presser-foot; a spring-arm is permanently attached to the rear end of the base-plate, and extends horizontally forward to the foreward end of the said plate. A sharp-pointed pivot or pin is secured in the forward end of the said arm, and is so arranged as to pass into an aperture formed through the forward end of the base-plate. The spring arm is provided with a longitudinal slot through which the needle passes, thus bringing the said arm in a position to be depressed by the descending movement
385, 386 of the needle-bar. A *guage* is attached to the base-plate for guiding the cloth. This device is used by passing the cloth over the base-plate and under the arm, and by a downward movement of the needle-bar the arm is depressed, forcing the pointed end of the

pivot through the cloth, perforating the same, and as the needle-bar ascends the said arm is elevated by its own elasticity, relieving the pivot from the cloth, and as the same is moved by the feed, the downward movement of the needle-bar is repeated, thus forming a line of perforations in the cloth parallel to the line of stitch.

It is fully seen from the foregoing description of the two devices that they are in no way identical, nor can any part or piece in one device be substituted for one in the other.

387, 388 In the Fuller and Goodell device the plate holding the blocks is detached from the parts operating thereon, which necessitates the adjustment of the parts separately for forming folds of different width, while in the Yentzer device the upper and lower parts, or, in other words, the base-plate and arm, are connected and together adjustable relative to the needle-bar for forming folds of different width. This principle, however, is well known to the art, and was at the time of the issuing of complainant's patents, the same being shown in the patent to C. D. Wheeler, of February 14th, 1860, No. 27179. In the Fuller and Goodell device are found two spring-arms, one carrying a die or chisel, acting upon a leather or other elastic block or die, one of which is a mechanical equivalent to the other. In the Yentzer device is found but

389, 390 one spring-arm, which carries a sharp-pointed pivot, adapted to enter the aperture on the base-plate, which is wholly unlike that of complainant's device, but so much of both devices as relates to the spring-arm and pointed pivot in the Yentzer device is well known to the art, and was at the time of the issuing of complainant's patent, the same being shown in the patent to C. D. Wheeler of February 14th, 1860.

Deponent further says that should the complainant's device be made in all its parts, as shewn in the model, it would be impracticable and inoperative, for the following reasons:

First. The arrangement of the parts and their connections are such that when subjected to the action of the machine and resistance of the fabric it could not sustain and analogous action.

Second. There seems to be no way provided by which the blocks may

391, 392 be permanently secured in the plate at the proper relative position with the die; therefore the resistance of the fabric would have a tendency to move them.

Third. When working heavy fabric, or when working fabric where several thicknesses are to be between the marking device, (as is often necessary,) the fabric would so fill the groove in the die as to prevent the blade from having sufficient action thereon to form the ridge; and

Fourth. When used in light fabric, the same being pinched between the die and the block by a succession of blows would have a tendency to injure the fibres; while in the Yentzer's device none of these difficulties are met with; the mark is formed by a series of perforations, which move the fibres latterally without injuring them, the perforations being such as those formed by the needle.

393, 394 Deponent further says that he has examined and is familiar with the tuck-marking device now being manufactured by defendants, and that the said device is identical in every way with the certified model of the said Yentzer patent, except a slight change in the form of construction, but that such change does not in any way change the principle.

Deponent further says that the forming of a mark in fabric to aid in tucking, and by a mechanical device, was old at the time of the issuing of both the complainant's and defendants' patents, the same being shown

in patent to C. D. Wheeler February 14th, 1860, and that the Yentzer device is in no way identical with the complainant's, either in principle of construction, mode of operation, or result attained, except that both receive their operating power from the needle-bar or arm of the
395, 396 machine and that they are both intended for the same purpose.

N. H. SHERBURN.

Subscribed and sworn before me this 19th day of August, 1872.

[SEAL.] M. J. DUNN,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. Wm. H. Bradley, clerk.

*Affidavit of Edwin J. Cubley, referred to in the foregoing certificate, case No. 1.*

Circuit court of the United States, northern district of Illinois.

HENRY W. FULLER
*v.*
ENOCH S. YENTZER AND WALTER SCALES. } In equity.

STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

397, 398 Edwin J. Cubley, being duly sworn, deposes and says that he is 32 years of age; that he resides in Chicago, Illinois; that he is an engineer and machinist, and that he is now, and has been for many years, engaged wholly in the manufacture of sewing-machine attachments, and that he has no interest in Yentzer's patent tuck-marker, and manufactures said patented article under contract only, when at all; that he has frequently been examined as a witness in patent cases.

Deponent further says that he has examined and is familiar with the C. D. Wheeler patent No. 27199, dated Feb'y 14, 1860, and that he has examined and is familiar with Fuller's & Yentzer's patent; that the C. D. Wheeler patent uses a spring-arm to free the upper marker from the goods while in theact of feeding or moving the goods along; that
399, 400 it uses a marker *that it uses a marker* on the upper and under sides of the goods, consisting of a notch beneath, filled with soft metal, and a point above the goods, by means of which point the goods are forced into the notch in its descent, and the continued motion of which forms a crease as the goods are fed or moved along; the markers are permanently fixed together, and not adjustable to each other, and is adjusted only as a whole in relation to the width of the tucks, and provided with a scale for determining the width of the same.

Deponent further says that he has examined the model and patent of H. W. Fuller, dated June 5th, 1860, number 28633, and is familiar therewith; that it embodies the same principles as the C. D. Wheeler patent, arriving at the same results in a more complicated manner: First,
401, 402 by using markers both above and below the goods; second, by using a spring-arm or lever, and by using a soft pad of leather or other material in place of a notch filled with soft metal; also by using a scale for determining the width of the tucks working by a reciprocating motion in the same manner and for the same purpose; that it has two sets of markers instead of one, one having the notch or pad below the goods and the point above, the other vi*sa* ver*se;* that the markers are not permanently connected, but are seperately moveable on an arm of the device, each having to be adjusted to the other whenever the width of a tuck is to be changed; that the mode of attachment to the sewing-machine is in three pieces, the scale and markers below

the goods being attached to the bed-plate of the sewing-machine
403, 404 by means of thumb-screw, while the upper markers and spring-arms are attached to a square bar which passes through a hole in a clamp to which it is fastened by means of said screw, which clamp is fastened to the presser-bar by means of a screw. The third piece is fastened to the needle-bar, and consists of a stiff piece of metal projecting over the spring arm or arms which contain the marker on the upper side of the goods, which piece of metal, by the descent of the needle-arm, forces the cloth into or on to the lower marker, as the case may be, carrying the goods with it for the purpose of forming a crease.

Deponent further says that he is familiar with Yentzer's patent as hereinbefore stated, dated Oct. 26, 1869, and April 11th, 1871,
405, 406 and numbered 113610, and is the manufacturer of the same, and has manufactured all the tuck-markers that have been made under said Yentzer's patent; that it consists, first, of a bed-plate made of a flat strip of brass or other metal attached to a presser-foot of a sewing-machine, having a scale marked upon it for determining the distance of the seam from the edge of the fold; 2d, of a gauge for guiding the edge of the fold after it has been marked and folded; 3d, of a lower and upper marker, the lower marker being a perforation through a flat piece of metal to receive the upper marker, and having a lip turned down on one side of the perforation or any other convenient place for holding the plate, containing the perforation up from the bed of the sewing-machine, to prevent the upper marker, which consists of a fine
407, 408 sharp point, from striking the bed-plate of the machine, thereby dulling the point, and injuring the sewing-machine; that each marker is fastened to a long strip of metal at the extreme left end, while the two are fastened together at the extreme right end, thereby forming a permanent adjustment of the marking-points in relation to each other, while both points, taken together, are adjustable in relation to the distance of the mark from the seam, and being held in the desired position by a flat plate or washer of metal lying over both the gauge and the lower marker-arm, which being pressed down by a stud and nut secure both at once in the desired position, the upper arm, to which is attached the point or upper marker, being bent up in a bow, thereby forming a spring for freeing the upper marker from
409, 410 the goods while in the action of being moved forward, and having in it an elongated slot for the passage of the needle of the sewing-machine, thereby allowing the end of the needle-bar to strike it, thus forcing the marker down upon the goods, causing it to perforate or mark the goods, a continuation of which, as the cloth is being fed along, produces a continuous mark in the goods. 4th. Having a piece of flat metal or wire lying along the top of the lower marker-arm for smoothing down the goods while in the operation of being marked.

Deponent further states that the first lot of said Yentzer's tuck-markers, so manufactured by said deponent, had a piece turned down on the left end of the lower marker-arm to hold it up from the bed-
411, 412 plate of the sewing-machine in order to give room for the passage of the upper marker, which consisted of a sharp point down through the lower marker, which consists of a perforation or slot in the lower marker-arm, and thereby prevent the point from striking the bed-plate of the sewing-machine and defacing the same, and become dulled itself; that deponent, finding he could save both material and labor in the manufacture of said tuck-markers by cutting the perforation in the said lower arm on three sides, and turning down the metal on the fourth side, so as to form the necessary support or leg for keeping the lower arm up from the bed-plate of the sewing-machine, changed

the manner of construction accordingly; that said change in construction was made with a view to economy merely, and without ref-
413, 414 erence to the working of the tuck-marker, there being actually no difference in the working of the markers, whether the support be formed by binding the metal down from the side of the perforation, or by bending down the end or a corner of the arm at some distance from the perforation.

Deponent further states that he finds in the Fuller & Goodell patents the markers in the device to be a chisel-formed blade and an elongated notch, in which *in which* is inserted leather or other elastic substance, in the Wheeler patent, a conical point and round notch filled with soft metal; whereas in the Yentzer patent a conical or sharp point is used to pass through an open or elongated slot in the plate beneath.

Deponent further finds that the markers in the Fuller & Goodell patents are substantially like the markers in the Wheeler patent
415, 416 in construction, mode of operation, principle, and result, and that Yentzer's differs from either in using an open long slot through the plate beneath the fabric as one of the markers, instead of a simple notch into the bed-plate filled with soft metal or leather or other elastic substance, and which deponent considers a material difference in the construction and mode of operation.

Deponent further says that mechanical devises embodying the principle of a notch and blade in machinery for various manufacturing and domestic purposes have been known to the art and in public use for more than fifteen years past, and in like manner devices for pinching, and neither is a new invention.

Deponent would refer for examples of the former to the various
417, 418 mechanisms and machines or devices for creasing sheet-iron in stove-manufactures; tin and other metals in the manufacture of tin-ware, tea-pots, & coffee-pots, and other table-ware, by means of a blade on the periphery of a wheel working in a groove or notch; also a fluting mechanism for doing up or fluting parts of ladies' dresses, and swedge-blocks in founderies, &c. In the latter the pincers, nippers, tweezers, and like devices for bending and creasing metals are common instances. Complainant did not invent the idea or principle, but simply a device or mechanism of his own for applying a well-known principle and process to tuck-markers as an attachment to sewing-machines.

EDWIN J. CUBLEY.

419, 420 Subscribed and sworn to before me this 17th day of August, 1872.

[SEAL.] SIMEON W. KING,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. W. H. Bradley, clk.

*Affidavit of G. L. Chapin, referred to in foregoing certificate, and used in case No. 2.*

Circuit court of the United States, northern district of Illinois.

HENRY W. FULLER
*v.*
ENOCH S. YENTZER AND WALTER SCATES. } In equity.

Affidavit of G. L. Chapin in the above-entitled cause.

STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

421, 422 G. L. Chapin, being duly sworn, deposes and says that he is about

forty years of age; that he is a practicing patent attorney and patent solicitor, and is a professional expert, also a practical mechanic; that he has been engaged as such attorney, solicitor, and expert in Chicago for more than seven years; that he is familiar with sewing-machines and with their attachments now in common use, and especially so with tuck-markers, gaugers, gatherers, pleters, creasers, &c.

Deponent further says that he has carefully examined re-issued letters-patent No. 3218, issued to complainant, assignee by mesne assignment from Israel M. Rose, for an improvement in tuck-creasing attachments for sewing-machines. The said Rose patent is composed in part of four levers, a cloth-plate and frame, and a set-screw
423, 424 to hold the frame to the cloth-plate of the sewing-machine. The whole parts are a unity, and when an adjustment is to be made all the parts are simply moved to or from the needle-bar. The several mechanisms for marking and creasing are a fixture to the frame, and are not adjustable relatively to each other. The marking is done by a short lever-jaw and a spring-lever jaw; the short jaw is hinged to the spring-lever jaw by a clasp, and is operated by a spring-lever fastened to it by a loose joint, and to an upper lever-bar which is pivoted to a vertical standard fastened to said frame; the spring-lever jaw is fastened to the same part of the frame as the vertical standard is, and when the lever-bar is forced downwardly by the needle-bar of the machine, both jaws, which are serrated at their pinching ends, are brought
425, 426 to the cloth passing over the bed of the machine, and the short jaw is, by means of the curved spring-lever, forced inwardly toward the lever spring-lever jaw, so as to grasp a portion of cloth and punch it to form a ridge or crease, a continuous movement of the parts forming a continuous mark on the cloth by a pinching or nipping process. In order that the device may be made operative, a cloth-plate or bar is fastened to the frame, and extended from it far enough for the short jaw to strike it at each downward movement, the spring-lever jaw operating a little distance from the plate, but not coming in contact with it. Now, if a single part, except cloth-plate, be removed from the devices as described, it will be wholly inoperative.

Deponent further says that he has examined tuck-marking
427, 428 devices marked "Patented Oct. 26, 1869, April 11, 1871," used by defendants, and at issue in this case, and find that neither of them is a unity, and that neither can*t* successfully operated by a single adjustment; and in the manner of their requiring a compound adjustment each, they possess features which are distinct, separate, and novel as against the Rose patent, No. 3218. In short, Yentzer*s* marks his work by such means as Rose in his patent (re-issue 3218) says were used prior to his invention, which is true. Yentzer uses a bed-plate with one or more adjustable attachments on it to be adjusted relatively to each other in order to operate. Rose has no such arrangement, his device being a unity and not adjustable relatively to its sep-
429, 430 arate parts. Rose uses two jaws for pinching a crease in the cloth; Yentzer uses no such devices nor any equivalents therefor, but instead thereof he used a point on a spring-lever and a hole in the bed-plate, which Rose says in re-issue 3218 (substantially says) was used prior to his invention. Rose uses an inflexible pivoted lever to receive motion from the needle-bar. Yentzer uses a spring-lever, not pivoted, but rigidly fastened to the bed-plate. Rose uses a spring-lever jaw and jointed jaw to punch the cloth; Yentzer has no such devices nor equivalents therefor. Rose uses a curve-spring lever to operate a short jaw, but Yentzer using no short jaw, & has no such spring-lever.

In brief, the principle of construction and mode of operation of the Rose patent No. 3218 are entirely different from those of the Yentzer
431, 432 patent. Further than this, C. D. Wheeler has a prior patent for marking-gauger for sewing-machines, dated Feb. 14, 1860, and No. 27179, which shows a spring-arm carrying a marking-point to operate in a notch in a bed-plate for marking cloth, which is a unity in adjustment, and more like complainant's device than respondent's device is like complainant's, and in the matter of adjustment said Wheeler's device fully anticipates the Rose patent. And Henry W. Fuller's patent of June 5th, 1860, both in the matter of adjustment and receiving motion from the needle-bar, anticipates the Rose patent, and is more like it than the defendant's is like the complainant's. In conclusion, Yentzer's attachments are found to be so dissimilar to that of Rose that unless a person were skilled in the art although a mechanic would not
433, 434 conceive they were for the same purpose, and that a person skilled in using the one would be very likely to require instructions to use the other, their construction, mode of operation, and principle being so different.

G. L. CHAPIN.

Subscribed and sworn to before me this 8th day of August, A. D. 1872.

[L. S.] D. HARRY HAMMER,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. Wm. H. Bradley, clk.

*Affidavit of N. H. Sherburne, referred to in the foregoing certificate of evidence as used in case No. 2.*

Circuit court of the United States for the northern district of Illinois.

HENRY W. FULLER
*v.*
435, 436 ENOCH S. YENTZER AND WALTER SCATES. } In equity.

Affidavit for defendants.

STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

N. H. Sherburne, being duly sworn, deposes and says that he resides in Elgin, Illinois; that he is a solicitor of patents and a practical mechanic; that he has an office in Chicago, Illinois; that he is thoroughly acquainted with the art of sewing-machines, their mechanism and attachments; that he has been examined as an expert in patent cases.

Deponent further says that he has examined and is perfectly familiar with the re-issued letters-patent, No. 3218, granted to Henry W. Fuller, the said complainant, assignee by mesne assignment of Israel M.
437, 438 Rose, for an improvement in tuck-creasing attachments to sewing-machines, and that he has also examined and is perfectly familiar with the model of tuck-marking attachments to sewing-machines, marked "E. S. Yentzer," to which is affixed the certificate of the Commissioner of Patents, dated June 5th, 1872, and for which a patent was issued to the said E. S. Yentzer, April 11th, 1871; that the said Rose patent is for forming a raised ridge on the upper surface of the fabric as it is passed over the cloth-plate of the machine for the purpose of forming a guiding-line on which the cloth may be folded, and that in the

Yentzer device the mark forming the guiding-line for turning the fold is made by a series of perforations through the cloth similar to that made by the needle; that the said Rose device consists of a mechan-
439, 440 ism embodying the following combination of mechanical parts, viz: a base-plate, to which is permanently attached a standard rising upon and from the said plate. To this standard is hinged a lever extending forward to and communicating with the needle-bar of the machine. A flat spring is vertically attached to the said base-plate slightly forward of the standard, and is bent to a horizontal position at a point below the lever. This spring extends forward to a point near the forward end of the said lever, and is there bent downward at an obtuse angle, forming a fixed jaw. At or near the centre of the downward-bent portion of this spring or jaw is hinged a flat rigid bar, which in connection with the adjacent portion of the spring forms a pair of jaws. To the upper end of the said bar or jaw is jointed a flat curved
441, 442 spring-lever, which is permanently attached to the lower sides of the main lever. Attached to the base-plate is a tongue extending from its forward end outward at right angles thereto, and in a position immediately under the moveable bar or jaw. The arrangement of the several parts is such, that when in their normal position, or when not positively acted on by the needle-bar, the lower extremity of the jaws, or that part coming in contact with the fabric, remains open and slightly above the tongue of the base-plate over which the fabric is passed, but when positively acted upon by the descending movement of the needle-bar, the jaw formed of the downward-bent portion of the spring is first brought in contract with and upon the fabric, impinging the same upon the cloth-plate of the machine and against
443, 444 the interior edge of the tongue, and the moveable jaw impinges the cloth on the upper surface of the tongue, and by the continuous downward movement of the needle-bar the main lever is further depressed, causing its spring end to act upon the upper end *to act upon the upper end* of the moveable jaw, moving the same on its fulcrum, causing the lower end of said jaw to move toward the stationery jaw, seizing the cloth resting against or over the corner of the tongue, which is pinched between the jaws, forming a slight ridge upon the upper surface of the same, which forms a guide to fold the cloth parallel to the line of stitch. The Yentzer device is found to consist of an entirely different combination of mechanical parts, viz: A base-plate, which is attached to
445, 446 the cloth-plate of the machine by means of a thumb-screw, or in the presser-foot a spring-arm is permanently attached to the rear end of the base-plate, and extends horizontally to the forward end of the same. A sharp-pointed pivot or pin is secured in the forward end of the said arm, and is so arranged as to pass into an aperture formed in and through the forward end of the base-plate. This spring-arm is provided with a longitudinal slot through which the needle passes, thus bringing the said arm in a position to be depressed by the descending movement of the needle-bar. A *guage* is adjustably attached to the base-plate for guiding the cloth. This device is used by passing the cloth over the base-plate and under the arm, and by a downward movement of the needle-bar the arm is depressed, forcing the pointed end
447, 448 of the pivot through the cloth, perforating the same, and as the needle-bar ascends the said arm is elevated from contact with the cloth by its own elasticity, thus relieving the pivot from the fabric, and as the same is moved by the feed the downward movement of the needle-bar is repeated, forming a line of perforations in the cloth like those formed by the needle, and parallel to the line of stitch.

Deponent further says that it is fully seen that the Yentzer device now at issue in this case is constructed on a different principle from that of the Rose patent; that no part of its mechanism corresponds in form or mode of action; that no part or piece of the one device may be substituted for a part or piece of the other; that the spring in the Rose patent acting to open and lift the jaws from contact with the fabric is so shaped as to form a part of the said jaws and would be inoper-
449, 450 ative without the curved spring lever and main lever, each part being necessary to the action of the others, while in the Yentzer device the spring and arm carrying the pivot is in one piece and is automatically lifted from contact with the fabric by its own elasticity. The principle, however, that is to say, the elevating of the upper part of the marking device from contact with the fabric automatically by means of a spring, is well known to the art, and was at the time of issuing of the original Rose patent, the same being found in the patent of C. D. Wheeler, of February 14th, 1860, No. 27179, for a marking-*guage* for sewing-machines, the spring being used to perform the same function. This principle is also common to other devices in which one part is automatically elevated from contact with another by means of
451, 452 a spring, the same being found in patent to John Andrews, dated May 30th, 1838, and A. Bailey, June 20th, 1840, for mortising-machines. It is further seen that with the Rose device a ridge is formed on the upper surface of the cloth by means of jaws which open and close at intervals to seize and pinch the same when at rest and then release it as the same is moved by the feeding-mechanism, while in the Yentzer device a line of perforations is formed in the cloth like the perforations formed by the needle. It is still further seen that in both the Rose and Yentzer devices the upper and lower parts are connected and are together adjustable with relation to the needle for forming folds of different width, shewing that in this principle
453, 454 the two devices are identical, but each principle is well known to the art and was at the time of the issuing of the origina Rose patent, the same being found in the patent to C. D. Wheeler, of February 14, 1860, No. 27179. In this device, that is to say, the Wheeler device, the upper and lower parts are connected and together adjustable relative to the needle, and for the same purpose.

Deponent further says that should the Rose device be made according to the model it would be impracticable, as it would not form a ridge on heavy or starched fabric, as the arrangement of the stationary jaw is such as to draw the cloth tightly over the tongue, thus preventing the moveable jaw from seizing the same, while with the Yentzer device the arrangement of the parts is such as to insure the perforating of the fabric at every downward movement of the needle-bar.

455, 456 Deponent further says that he has examined and is familiar with the tuck-marking device now being manufactured by the said defendants, and that the said device is in every way identical with the certified model of the said Yentzer's patent except a slight change in the form and construction, but that such change does not in any way change the principle or mode of operation. From the above description of the Rose and Yentzer devices it is found that they are in no way identical, either in principle, construction, mode of operation, or result attained, except that both receive their operating power from the needle-arm or needle-bar of the machine; that in both devices the upper and lower parts are connected and are together adjustable relative to the needle, and that the upper part of both is lifted from contact
457, 458 with the cloth by the action of a spring, all of which was well known to the art at the time of the issuing of the said Rose

patent; the operating of a tuck-marking device automatically by the needle-bar or needle-arm of a sewing machine being fully shewn in patent to Henry W. Fuller & A. W. Goodell, of June 5, 1860.

N. H. SHERBURNE.

Subscribed and sworn to before me this twentieth day of August, A. D. 1872.

[SEAL.] A. E. GUILD, JR.,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. W. H. Bradley, clerk.

*Affidavit of Edwin J. Cubley, referred to in the foregoing certificate of evidence as used in case No. 2.*

459, 460 Circuit court of the United States, northern district of Illinois.

HENRY W. FULLER
*v.*
ENOCH S. YENTZER AND WALTER SCATES. } In equity.

STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

Edwin J. Cubley, being duly sworn, deposes and says that he is 32 years of age; that he resides in the city of Chicago and State of Illinois; that he is an engineer and machinist; is now, and has been for several years, engaged wholly as a manufacturer of sewing-machine attachments, but has no interest in the Yentzer patent or the sale of the manufactured article, and he manufactures the same under contract
461, 462 only; that he has frequently been examined as an expert in patent cases.

Deponent further says that he has examined and is familiar with the Rose patent, No. 40084, dated Sept. 22d, 1863, re-issued No. 3218, dated Dec. 1st, 1868, and that it consists, first, of a base or bed-plate, fastened to the bed-plate of a sewing-machine with a thumb-screw, through an elongated hole or slot, allowing it to be adjusted to the width of tuck desired; second, an upright standard, fastened to the right end of the bed-plate, at the top of which is fastened a jointed arm, extending to the left and passing under some projection of the needle-bar of the sewing-machine, which in its descent causes it to press on a spring at its left end, which spring operates a pair of jaws, which are connected at the left end of a spring-lever, which is fastened at the right end of a bed-
463, 464 plate, and which spring-lever raises the nippers or jaws from the goods while the goods are being moved forwards, the jaws being joined together by a jointed clamp in the centre, one of them being permanently affixed to or a part of the spring-lever before mentioned, the other connected with the spring from the jointed lever, which, when the jointed lever is forced down upon the goods, causes the loose jaw to grasp a small portion of the goods, and forcing it up against the other jaw, forms a pinch or crease, a continuation of which forms a continuous crease, parallel with the line of sewing. This tuck-marking attachment does its marking wholly on the upper side of the goods, and not like the Wheeler and Yentzer's devices, which use a marker on opposite
465, 466 sides of the goods, the plate running under the jaws in the Rose patent, acting merely as a protection to the plate of the sewing-machine, as in my opinion it would work equally well on the bed-

plate of a sewing-machine, as far as making a mark or crease is concerned; and deponent further says that said Rose patent is not at all similar in construction, mode of operation, or principle, to the Yentzer patent, although the result obtained is the same in both, so far as making a line or crease is concerned.

Deponent further says that he is familiar with Yentzer's device for making tucks for sewing-machines, stamped Oct. 6th, 1869, and April 11th, 1871, and is the manufacturer thereof, and has manufactured all the tuckers that have been made under said Yentzer's patent; that it consists, first, of a bed-plate, made from a flat strip of brass or
467, 468 other metal, attached to a presser-foot of a sewing-machine, having a scale marked upon it for determining the distance of the seam from the edge of the fold. Second, of a *guage*, for guiding the edge of the fold after it has been marked and folded. Third, of an upper and a lower marker, the lower marker being a perforation through a flat piece of metal to receive the point of the upper marker, having a lip turned down on one side of the perforation; or any other convenient place for holding the plate containing the perforation, up from the bed of the sewing-machine, to prevent the upper marker, which consists of a sharp point, from striking the bed-plate of the sewing-machine, thereby dulling the point and injuring the machine; that each marker is fastened to a long strip of metal at the extreme left end, while the
469, 470 two are fastened together at the extreme right end, thereby forming a permanent adjustment of the marking points in relation to each other, while both points taken together are adjustible with relation to the distance of the mark to the seam to be made, and are held in the desired position by a flat plate or washer of metal lying over both the *guage* and lower marker-arm, which, being pressed down by a stud and nut, secure both at once in the desired position, the upper arm to which is attached the point or upper marker being bent up in a bow, thereby forming a spring for freeing the upper marker from the goods while in the action of being moved forwards, and having in it an elongated slot for the passage of the needle of the sewing-machine, thereby allowing the end of the needle-bar to strike it, and thus force
471, 472 the marker down upon the goods, causing it to perforate or mark the goods, a continuation of which, as the cloth is being fed along, produces a continuous mark in the goods. Fourth, having a piece of flat metal or wire lying along the top of the lower marker-arm for smoothing down the goods while in the operation of being marked. The first Yentzer tuck-markers manufactured by me had a piece turned down on the left end of the lower marker-arm, to hold it up from the bed-plate of the sewing-machine in lieu of the extra piece soldered on for that purpose, as shown in the model; but afterwards finding that I could save both material and labor by cutting the perforation on three sides and turning it down on the other side, thereby forming a piece for holding the lower marker-arm up from the
473, 474 bed-plate of the sewing-machine, and serving the same purpose as the piece soldered on or the end bent down, at less expense, I did so change their construction. There is no difference in the working of the attachment, whether the lip be bent down from the surplus metal which is cut out of the perforation, or soldered on, or bent down at some distance from the perforations. The only to be obtained by it is the raising and support of the lower marker-arm from the bed-plate of the sewing-machine, high enough to prevent the sharp point of the upper marker from coming in contact with it, thereby damaging both, as before stated.

Deponent further states that he has examined and is familiar with the C. D. Wheeler patent, No. 27179, dated Feb'y 14, 1860, and find it uses a spring arm to free the upper marker from the goods
475, 476 while in the act of being fed or moved along; that it uses a marker on both the upper and lower sides of the goods, consisting of a notch with soft metal beneath the goods and a point above the goods, by the descent of which point the goods are forced into the notch, and the continued motion of which forms a crease, as the goods are fed or moved along; that the markers are permanently fixed together and not adjustable to each other, but are adjustable as a whole in relation to the width of the tucks desired to be marked, and is provided with a scale for determining the width of the same.

Deponent further says that he finds the following differences between said Yentzer's device and the device of the complainant under
477, 478 the Rose patent, viz: First, Yentzer's device has markers on the opposite sides of the goods, whereas the Rose patent has both markers on the upper sides of the goods, and actually has no lower marker; second, the spring arm for Yentzer's device for lifting the upper marker from the cloth consists of a single spring-arm lever, whereas in the Rose device the spring arm and the fixed jaw of the marking-device require four levers to operate the marking-device; third, I find that the device in the Rose patent for attaching the tuck-marker to the sewing-machine is alone used for adjusting the width of the tuck also, and this can only be done by moving the entire device, whereas the Yentzer's device is attached to the presser-foot of the sewing-machine by a set-screw, and the width of the tuck is adjusted to a
479, 480 gauge attached to the device by a thumb-screw.

EDWIN J. CUBLEY.

Subscribed and sworn to before me this 17th day of August, 1872.
[SEAL.] SIMEON W. KING,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. W. H. Bradley, clk.

*The affidavit of G. L. Chapin, referred to in the foregoing certificate of evidence and used in case No. 3.*

Circuit court of the United States, northern district of Illinois.

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } In chancery.

Affidavit of G. L. Chapin in the above-entitled cause.

481, 482 G. L. Chapin, being duly sworn, deposes and says that he is about forty years of age; that he is a practicing patent attorney and patent solicitor, and is a professional expert, also a practical mechanic; that he has been engaged as such attorney, solicitor, and expert in Chicago for more than seven years; that he is familiar with sewing-machines, and with their attachments now in common use, and especially so with "tuck-markers," gauges, gatherers, ple'ters, creasers, &c.

Deponent further says that he has carefully examined re-issued letters-patent 3218, and is familiar therewith, and that he has examined the patent granted to H. B. Goodrich, January 2d, 1871, No. , and the

The arrangement of the several parts is such that, when in their normal position or when not positively acted on by the needle-bar, the lower extremity of the jaws or the part coming in contact with the fabric remains open and slightly above the tongue of the base-plate over which the fabric is passed; but, when positively acted upon by the descending
501, 502 movement of the needle-bar, the jaw formed of the downward-bent portion of the spring is first brought in contact with and upon the fabric, impinging the same upon the cloth-plate of the machine and against the inner edge of the tongue, and the moveable jaw impinges the cloth on the upper surface of the tongue, and by the continuous downward movement of the needle-bar the lever is further depressed, causing its spring-end to act upon the upper end of the movable jaw, moving the same upon its fulcrum, causing the lower end of said jaw to move toward the stationary jaw, seizing the cloth resting against or over the corner of the tongue, which is pinched between the jaws, forming a slight ridge upon the upper surface of the same, which forms a guide to fold the cloth parallel to the line of stitch.

503, 504 Deponent further says that he has examined and is familiar with the tuck-creasing attachment manufactured by H. B. Goodrich, defendant in this case; that the said device was secured to the said defendant and one Wm. E. Barnum, by letters-patent dated January 2d, 1872, and that the said device is unlike that of the plaintiff in its construction, mode of operation, and the result attained, except that both are operated automatically by the needle-bar of the machine, and each have their upper and lower parts connected and together adjustable relative to the needle for forming folds of different width, and that the device of the defendant consists of the following combination of mechanical parts, viz: A base-plate provided with a longitudinal groove or channel formed in its lower surface, and within which is loosely
505, 506 fitted a flat metal plate, so arranged as to admit of a longitudinal sliding movement. The forward end of this plate is bent in a U shape, forming a hook, the upper portion of which extends backward over the upper surface of the base-plate, and slightly above the same. A flat metal strip is permanently attached to the rear end of the base-plate, and extends horizontally forward to a point near the forward end of the said base-plate, and slightly above the same. This strip is so arranged as to allow the upper portion of the hook to pass over the same, and in close proximity thereto when said plate is moved backward. To the rear end of the base-plate is permanently attached a standard, to which is hinged an arm extending forward to a point
507, 508 near the forward end of the said plate. This arm is attached to the needle-bar by means of a loop or eye through which the needle passes, and is provided at its forward end with a spring-pressure pivot, so arranged as to bear upon the forward end of the metal strip when said arm is depressed by the descending movement of the needle-bar. To the rear end of the said arm is attached a vertical lever, which is jointed to the rear end of the sliding-plate. A coiled spring is attached to the said standard, and communicates with the arm, by which the said arm is automatically raised from contact with the metal strip as the needle-bar ascends. This device is used by passing the fabric over the end of the hook and base-plate, and under the metal strip, and the arrangement of the parts is such that when in their normal posi-
509, 510 tion, or when not positively acted on by the needle-bar, the hook is forward of the end of the base-plate and metal strip, and the pivot above the fabric; but when positively acted upon by the descending movement of the needle-bar, the hook is moved backward, which

seizes a portion of the fabric and carries it backward over the end of the metal strip, forming a fold over the end of said strip; and as the said hook has reached the limit of the backward movement, the further depression of the said arm by the downward movement of the needle-bar brings the pivot upon the edge of the fold, compressing the same between its end and the upper surface of the metal strip, forming the said fold parallel with the line of stitch.

Deponent further says that it will be seen that the device of H.
511, 512 B. Goodrich now at issue in this case is constructed on a different principle from that of the Rose patent; that no part of its mechanism corresponds in form or mode of action; that the spring on the Rose patent acting to open and lift the jaws from contact with the fabric is so shaped as to form a part of the said jaws, and would be inoperative without the curved-spring lever and lever, each part being necessary to the action of the others, while in the Goodrich device the spring acting to automatically left the pivot from the fabric is a separate piece and so arranged as to have a positive action upon the arm, the arm acting to move the hook forward to receive the fabric. This principle, that
513, 514 is to say, the lifting of the upper part of the marking-device from contact with the fabric automatically by means of a spring, is well known to the art and was at the time of the issuing of the original Rose patent, the same being found in the patent to C. D. Wheeler of February 14th, 1860, No. 27179 for a marking *guage* for sewing-machines, the spring being used to perform the same function. This principle is also common in other devices, in which one part is automatically elevated from contact with another by means of a spring, the same being found in patent to John Andrews May 30th, 1838, and A. Bailey, June 20, 1840, for mortising-machines. It is further seen that in the Rose device a ridge is only formed on the upper surface of the cloth by
515, 516 means of jaws which open and close at intervals to seize and pinch the same when at rest, and then release it as the same is moved by the feeding-mechanism, while in the Goodrich device the fabric is first folded over the end of the metal-strip by means of the backward movement of the hook, and after the fold is made the same is compressed between the end of the pivot and metal strip. It is still further seen that in both the Rose and Goodrich patents the upper and lower parts are connected and are together adjustable with relation to the needle-bar, forming folds of different widths. This principle is well known to the art, and was at the time of the issuing of the original Rose patent, the same being found in the patent to C. D. Wheeler of Feb-
517, 518 ruary 14th, 1860, No. 27179. In this the upper and lower part is connected and are together adjustable relative to the needle and for the same purpose.

Deponent further says that the Rose device, when made in accordance with the model, would be impractical, as it would not form a ridge on heavy or starched fabrics. The arrangement of the stationary jaw is such as to draw the cloth tightly over the tongue, thus preventing the movable jaw from seizing the same; while in the Goodrich devise the arrangement of the hook is such as to insure the seizing of the cloth at every action of the same and upon all kinds of fabric. It is further seen that jaws arranged to seize and pivot the fabric, for the pur-
519, 120 pose of forming a ridge or mark thereon and then releasing the same is found in the Rose patent, but such principle is well know to the art, and was at the time of the issuing of the Rose patent, the same being found in the patent of Henry W. Fuller of June 5th, 1860, the only difference being a slight change in the form of the pinching sur-

faces, and that in the Fuller patent the jaws are arranged upon opposite sides of the fabric, while in the Rose patent the jaws are made to act upon the upper surface of the same; therefore, the forming of ridges in cloth was not new at the time of the issuing of the said Rose patent. From the above description of the Rose and Goodrich devices it is found that with the Goodrich a complete fold is formed in the fabric;
while with the Rose device a ridge only formed, which shows
521, 521 that the result is unlike; also that their principles of construction and mode of operation are not in any way identical, only in their adjustment relative to the needle and their attachment, i. e., action by th needle-bar.

N. H. SHERBURNE.

Subscribed and sworn to before me this 20th day of August, A. D. 1872.

[SEAL.] A. E. GUILD,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. W. H. Bradley, clk.

*Affidavit of Edwin J. Cubley, referred to in the foregoing certificate of evidence, and used in case No. 3.*

Circuit court of the United States, northern district of Illinois.

HENRY W. FULLER
*v.*
HERMAN B. GOODRICH. } In chancery.

523, 524 STATE OF ILLINOIS,
*County of Cook, City of Chicago, ss:*

Edwin J. Cubley, being duly sworn, deposes and says that he is 32 years of age; that he resides in Chicago, Illinois; that he is an engineer and machinist; and that he is now, and for several years has been, engaged wholly as a manufacturer of sewing-machine attachments, but has no interest in Yentzer's patent tuck-marker or the sale of the manufactured article, as he manufactures the same under contract only; that he has frequently been examined as an expert in patent sewing-machines and other patent cases.

Deponent further states that he has examined and is familiar with the Rose patent, number 40084, dated Sept. 22d, 1863, re-issued number
3218, dated Dec. 1st, 1868, and also with the Barnum patent,
525, 526 assigned to the defendant, numbered 122352, and dated
, the patents in question in this case, and I do not consider them at all similar in mechanism, construction, mode of operation, or principle, although the result obtained in both is the same. The Rose patent consists, first, of a base or bed-plate fastened to the bed-plate of a sewing-machine with a thumb-screw through an elongated hole or slot, allowing it to be adjusted to the width of tuck desired; second, an upright standard fastened to the right end of the bed-plate, at the top of which is fastened a joint-arm extending to the left end, passing under some projection of the needle-bar of the sewing-machine, which, in its descent, causes it to press on a spring, operates a pair of jaws,
which are connected at left end of a spring lever, which is fast-
527, 528 ened at the right end of a bed-plate, and which spring-lever raises the uppers or jaws from the goods while the goods are

being fed forwards, the jaws being joined together by a jointed clamp in the center, one of them being permanently fixed to or a part of the spring-lever before mentioned, the other connected with the spring from the jointed lever, which, when the jointed lever is forced down upon the goods, cause the loose jaw to grasp a small portion of the goods, and, forcing it up against the other jaw, forms a pinch or crease, a continuous crease parallel with the line of sewing. This tuck-marking attachment does its marking wholly on the upper side of the goods, the plate running under the jaws in this device acting merely as a protec-
529, 530 tion to the bed-plate of the sewing-machine, as, in my opinion, it would work equally as well on the bed-plate of a sewing-machine so far as making a mark or crease is concerned.

Deponent further says that the mode of construction of the Barnum or Goodrich patent is the bed-plate fastened to the machine by a thumb-screw and elongated slot having fastened to it at its right end an upright standard, to which is fastened a short lever running down to the bed-plate of the tuck-marker, to the lower end of which is fastened a sliding piece or plate having a hook bent over for the purpose of drawing the goods up over the end of another flat piece of metal which lies on top of the goods and which is marked with a scale of inches for determining the width of the tuck desired. The short lever
531, 532 before mentioned has also fastened to it, a short distance from its upper end, a long lever running parallel to and over the hook sliding plate and graduated top plate before mentioned, to which is fastened a movable clasp through the end of which a hole is made for the passage of the needle of the sewing-machine. The long lever also has a spring near where it is fastened to the short lever which lifts it up from the goods while in the process of being fed along, and at its extreme left end has a punch or hammer which when the lever is forced down presses the fold of the goods formed by the hook before mentioned; thereby making a crease or mark, the continuation of which forms a line or crease parallel with the line of sewing, the hook
533, 534 having a lateral motion from the action of the lower end of the short lever, which in turn is moved by the long lever and that by the action of a needle-bar. This tuck-marker also has a gauge made of a flat piece of metal lying on the top of the bed-plate of the tuck-marker, and held in its position by the same screw as the tuck-marker, through an elongated hole or slot for the purpose of determining the distance of the stitching from the folded edge of the goods, and which is also fastened to the bed-plate of the tuck-marker by a large-headed rivet which passes through a long slot in the gauge and is riveted or fastened to the bed-plate.

Deponent further says that he is familiar with, having exam-
535, 536 ined, the C. D. Wheeler patent No. 27179, dated Feb. 14th, 1860, and finds that it uses a spring-arm to free the upper marker from the goods while in the act of feeding or moving the goods along; that it uses a marker on both the upper and under sides of the goods, consisting of a notch beneath the goods and a point above the goods by means of which point the goods are forced into the notch in its descent, and the continued motion of which forms a crease as the goods are fed or moved along; that the markers are permanently fixed together, and not adjustable to each other, and is adjustable as a whole in relation to the width of the tucks, and provided with a scale for determining the width of the same.

Deponent further says that mechanical devices embodying the prin-

ciples of a notch and blade in machinery for various manufact-
537, 538 uring and *and* domestic purposes have been known to the art and in public use for more than fifteen years past, and in like manner devices for pinching, and neither is a new invention. Deponent would refer for examples of the former various mechanisms and machines or devices for creasing sheet-iron in stove manufact*u*ries, tin and other metals in the manufacture of tin-ware, tea-pots, and coffee-pots, and other table-ware, by means of a blade on the periphery of a wheel working in a groove or notch; also a fluting mechanism, for doing up and fluting parts of ladies' dresses, and swedge-blocks in foundries, &c. In the latter, the pincers, nippers, tweezers, and like devices for bending
and creasing metals are common instances. Complainant did
539, 540 not invent the idea or principle, but simply a device or mechanism of his own for applying a well-known principle and process to tuck-markers as an attachment to sewing-machines.

EDWIN J. CUBLEY.

Subscribed & sworn to before me this 17th day of August, 1872.
[SEAL.] SIMEON W. KING,
*Notary Public.*

(Endorsed:) Filed Sept. 2, 1872. Wm. H. Bradley, clk.

541, 542 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a complete transcript of the record and proceedings had in said court in the matter wherein Henry W. Fuller and Isaac W. Barnum were the complainants and Enoch S. Yentzer and Walter Scates were the defendants in suit on the chancery side of said court as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Chicago this 29th day Sept., 1874.

[SEAL.] WM. H. BRADLEY, *Clk.*

543 UNITED STATES OF AMERICA, *ss:*

In the supreme court, of the October term, A. D. 1874.

HENRY W. FULLER AND ISAAC W. BARNUM
*vs.*
ENOCH S. YENTZER AND WALTER SCATES.

Tuck-creaser. Patent case I.—Appeal in equity from the northern district of Illinois.

*Assignment of errors.*

And now come the said appellants by Charles C. Bonney, their counsel, and say that in the proceedings, orders, and decrees in favor of the
said appellees, which are contained in the foregoing transcript of
544 the record of the cause, there is manifest error in the following among other things, to wit:

First. The said circuit court erred in dismissing the cause for want of equity.

Second. The said circuit court also erred in decreeing costs against said appellants and in favor of said appellees.

Third. The said circuit court also erred in not decreeing that the said

appellees, defendants in the said court, are guilty of infringing the letters-patent of the said appellants, the complainants therein.

Fourth. The said circuit court also erred in not awarding a perpetual injunction against the said appellees as prayed for in the bill of complaint.

Fifth. The said circuit court also erred in not decreeing that the
545 said appellants are entitled to recover damages from the said appellees for such infringements, and in not awarding to said appellants a reference to one of the masters in chancery of the said court to inquire of such damages and report the same to be decreed to said appellants.

Sixth. The said circuit court also erred in entering the order, a copy whereof is contained in said transcript, whereby said appellants were restrained from prosecuting suits in other courts of justice against other infringers of their said letters-patent.

Seventh. The said proceedings, orders, and decrees, so far as the same are in favor of said appellees and against said appellants, are otherwise manifestly erroneous and contrary to the law of the land.

546 Wherefore the said appellants pray that for the errors aforesaid, the final decree of the said circuit court dismissing the said cause for want of equity, and the said order of the said circuit court restraining the said appellants from prosecuting suits against other infringers of their said letters-patent in other courts of justice, and the other proceedings, orders, and decrees in favor of said appellees and against the said appellants in said transcript of the record contained, may be annulled, reversed, and altogether made as nothing, and that this cause may be remanded to the said circuit court with directions to enter such orders and decrees therein in favor of said appellants as are prayed for in their said bill of complaint, and that they may be
547 restored to all things which they have lost by reason of the errors aforesaid, &c.

CHARLES C. BONNEY,
*Sol. and Counsel for Appellants.*

Supreme Court of the United States.

HENRY W. FULLER ET AL. }
*vs.* } In equity.
ENOCH S. YENTZER ET AL. }

And afterwards, to wit, on the first Monday of October, A. D. 1874, came the said defendants, by Walter B. Scates and Henry C. Whitney, their solicitors, and say that there is no error either in the record or proceedings aforesaid, or in the rendering of the decree for dismissing the bill aforesaid; and they pray that the said Supreme Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error; and that the judgment and order of dismissal aforesaid, in form aforesaid given, may be in all things affirmed, &c.

WALTER B. SCATES,
HENRY C. WHITNEY,
*Sols. & of Counsel for Appellees.*

548 *Opinion.*

The following is the report of the oral opinion of the circuit judge in

these cases, given with the models before him, and which are referred to in the opinion.

Opinion delivered June 10, 1874.

These three cases were argued upon the motion for a preliminary injunction, and I then declined to issue the injunction. They afterwards went to proofs and were argued upon final hearing, and having given them all the consideration which I have been able, in the midst of other engagements, I remain substantially of the same opinion as when the motion for an injunction was argued, having come to the conclusion that the plaintiffs are not entitled to the relief they ask. The cases are by no means free from difficulty, but I will state the reasons why I have come to this conclusion.

I have no doubt of the validity of the two patents under which the plaintiffs claim—the first patent of Fuller issued in 1860, and the other, what is called the Rose patent, issued in September, 1863, and re-issued in December, 1868, and of which Fuller is the assignee. The original patent of Fuller, so far as it is material to consider it in connection with the questions involved in this case, was for a device for creasing and tucking cloth by means of a notch and blade. Here is the original device of Fuller, (indicating;) it was constructed in such a way as to be attached to the bed-plate of the sewing-machine, and the special device by which the creasing was performed was operated by means of the needle-bar. The notch might be above or below. The result was of course substantially the same, and it could be arranged in front of the needle or behind it, according to the function that it was required to perform.

The first question to be determined is: What is the extent of the invention of Fuller? He did not invent the notch and blade; that was an old device; nor springs; they also were old.

All that he invented was the application of the notch and blade, the springs, and the various other parts of the mechanism to the sewing-machine. He certainly could not claim the power of the needle-bar in all its various applications.

All that he could claim, and I think all that his patent properly construed can be considered to cover, is the particular device which
549 he adapted in its application to the bed-plate of the sewing-machine and to the needle-bar. Otherwise, we would have to hold that wherever springs or the notch and blade were applied to the needle-bar, or any other old appliance was taken by which the power of the needle-bar was used in the construction and operation of a creaser, his device would cover it. That, certainly, cannot be the proper construction of his invention. It is only the special mechanism which he has devised in its application to the needle-bar and the other parts of the sewing-machine by which the result was obtained. The difficulty arises in the application of the invention. It is natural always, where inventors have discovered some special device or mechanism by which a useful result is obtained, and in the progress of the art various modifications are made, or new ones are invented, which produce the same result in greater or less perfection, to attempt to bring all subsequent discoveries within the scope of their device. It is perfectly right, where any device is subsequently used which may be said fairly to come within the principle of the original invention, that the party should be protected; but it would be wrong to stretch an invention beyond the legitimate bounds of the discovery, so as to exclude all other inventions within the same field of operations. For instance, in this case it would be obviously an unsound doctrine to hold that no one else could take the notch

and blade or springs, in whatsoever form they might be used, and apply them to the bed-plate and to the needle-bar of a sewing-machine.

Wherever any other person subsequently takes what may be substantially the same device or the same mechanism and attempts to apply it to the needle-bar and to the bed-plate of a sewing-machine, he may be said to be within the invention which Fuller first gave to the world.

As I understand the views of the plaintiffs, there is an effort in this case to bring within the scope of Fuller's device what is not legitimately within the true boundaries of that discovery, because we have to adopt substantially that rule in order to sustain the view of plaintiffs' counsel, and to say that no one else could take the springs or apply the power of the needle-bar or attach a form of notch and blade for creasing to the bed-plate without infringing Fuller's device.

So in relation to the Rose patent, of which Fuller is the assignee, and the validity of which of course he cannot question, and the value of which is not controverted.

It is admitted that Fuller's invention does not bring within its scope all forms of tuck-creasers when applied to the needle-bar and to
550 the bed-plate of the sewing-machine; otherwise, Rose's invention must fall. But the ground upon which that can stand is, that it is substantially a different device. In Fuller's mechanism the act of creasing is performed as has been stated, and a model of which is before me. Under the Rose patent, and by the mechanism which he devised for creasing, there is a different arrangement of the various parts. There is no notch and blade as in the Fuller patent, but there are springs. Here is a model of the Rose device, (indicating.) It is attached to the bed-plate of the sewing-machine. It is operated by the power of the needle-bar. There is a spring attached to a staff and another which form together the jaws, which pinch the cloth in this way (indicating) as it passes through the sewing-machine. This presses the upper spring, bring the jaws together, and the movement of the needle-bar down places the jaws upon the cloth, which passes between them and an attachment of the bed-plate. It makes a crease in this way upon the cloth; and it is said to have an advantage over Fuller's device in that it does not perforate or destroy or even impair the texture of the cloth. Now, the same principle, I think, must be considered applicable to the device of Rose as to that of Fuller, namely: he must be confined to the special mechanism which he has invented and which he attaches to the sewing-machine, and by means of which he performs a crease in the cloth, and thus enables the operator to make the tuck.

It will be observed that Rose attached his device to the bed-plate of the sewing-machine and operated it by means of the needle-bar, as Fuller had done; and there was nothing in Fuller's to prevent the operation of the Rose device.

Now, that being so, it simply becomes a question, when one uses any particular form of mechanism, whether or not, so far as these two patents are concerned, it comes within either of them. The theory is to bring all other forms of mechanism by which a crease is made and a tuck formed within these two inventions of Fuller and Rose; and it is said these have been so far the only two known methods of forming the crease. Everything that is legitimately within them is of course within the invention of these two patentees; but it cannot be said that, because they form the crease by the notch and blade and by the pincers, *that* no one else can form a crease by some other device different from that of Fuller or of Rose. In other words, that they have patented a result or an effect, and not the particular form of mechanism which they have set

forth in their specifications. If this is the true construction of
551 these patents, then we shall not have so much difficulty in determining whether or not the defendants have infringed the two devices invented by Fuller and Rose.

To take the first case. The ground assumed by the plaintiffs is that the tuck-creasers manufactured by Yentzer and Scates infringe the first claim of Fuller.

The first claim of Fuller is:

"The forming of one, two, or more creases in cloth, by means of markers on opposite sides of the cloth, which markers are the notch and blade or the notch and point, one connected with the bed of the machine and the other operated simultaneously with the vibrations of the needle-bar in a sewing-machine."

As I have said, the notch and blade are old; the springs are old. It may be true—it is not necessary to controvert it in this case—that Fuller was the first person to apply the notch and blade and the springs to a sewing-machine so as to form a crease, but I think that no one can take something old and apply it in a new way or a new form so as to produce a particular result and be protected beyond the particular way or form or device and the application which he has made. Otherwise, as I have already said, any one could take an old device and make a new application of it and prevent all other persons from taking the same and making another and different application by which a like result is brought about. The question is whether Yentzer and Scates have done that. Now, here is the model of the Fuller patent, (indicating.) Here is one form of the Yentzer device and a tucker which they have manufactured. Here is the spring and the power of the needle-bar applied to the spring. Here is—if you choose to call it so—the notch and blade attached to the bed-plate. But the question is, whether the springs and notch and blade are used in the same way as in the Fuller patent. Fuller covers by his own special mechanism anything that is fairly within it. He does not include other and different devices or mechanism by which the same result is reached; and I think there may be fairly said to be a difference—such a difference as does not bring it within the mechanism of Fuller; and so it may be said of the other forms of manufacture by Yentzer and Scates.

In the second suit, which is also against Yentzer and Scates, the ground assumed by the plaintiffs is that the creasers manufactured by
552 them infringe the 6th claim of the Rose patent, which refers to what is called the "unity of adjustment."

That claim is for "a tuck-creasing mechanism such as described, having its upper and lower parts connected and together adjustable as to its relation to the needle of the sewing-machine and operated by the sewing-machine substantially as set forth."

If the view of the plaintiffs' counsel as to the construction of the Rose patent is correct, then all these various devices would be infringements of that claim. If, in other words, Rose has patented every form of mechanism by which a creaser is attached or adjusted to the sewing-machine, and by which unity of adjustment is brought about, then there could be no question but the defendants have all infringed; but I think that the view of the counsel of the extent of this claim is not correct. I think the claim is narrower.

It is insisted on the part of the plaintiffs that this patent cannot be restricted to a unity of adjustment in a tucker of the mechanism such as described in the Rose specifications. I think it is so restricted. Let us see. It is said that in the claim the words are used "a tuck-creasing

mechanism," and that it means, therefore, any tuck-creasing mechanism. "A tuck-creasing mechanism having its upper and lower parts connected and together adjustable." If that were the claim and it could stand as the invention of Rose, then it might be the defendants would all infringe; but that is not the claim. It is qualified; it does not mean every kind of tuck-creasing mechanism having its upper and lower parts connected and together adjustable, but any tuck creasing mechanism substantially such as described, which words are very important and essentially qualify the preceding words. It must, therefore, mean the kind of mechanism, mechanism such as is here described—not any form of mechanism, however different it might be, but this particular form of mechanism, or that which is substantially the same.

We cannot strike out material words from the claim itself and enlarge the meaning of the invention, but we must limit it fairly, I admit, within the language of the claim. It is not the kind of mechanism that is substantially like that, (showing one model,) but any mechanism substantially like that, (showing another model,) which is claimed in the sixth claim of the Rose patent, and no other, in my opinion.

553 The third suit is by Fulier as the assignee of the Rose patent and against Goodrich, and it is alleged that Goodrich infringes the first, second, fifth, sixth, and eighth claims in the Rose patent.

There seems to be, I would remark, in forming the claims under the Rose patent a disposition to expand them unnecessarily. For instance, the first and second claims are substantially the same; one, to be sure, speaks of the mechanism by which the crease is formed, and the other of the method of pinching the fabrics by which the crease is formed; but, of course, they resolve themselves into substantially the same thing. The first claim is: "The mechanism substantially as herein described for forming a ridge or ridges on fabrics to be afterwards folded in the line of such ridges." That is this device—a model of which I now hold in my hand—the mechanism substantially as it exists here.

The second claim is the method of nipping or pinching the fabrics to form ridges or creases thereon, by means of jaws opened and closed at intervals to seize and pinch the fabric when at rest, and then release it as the same is moved along by the feed in the sewing-machine. But still it means the method produced or seen in this form of mechanism which is referred to in the first claim, and the only difference, therefore, between the first and second claim is the one speaks of the device as the mechanism and the other the method by which that mechanism produces the crease.

The fifth claim is the combination of the creasing device or devices of the tuck-marker with the jointed lever, substantially as and for the purposes set forth.

The sixth claim I have already referred to and considered.

The eighth claim is the combination of the lever and spring with the tuck-marker, having upper and under parts connected and together adjustable as specified substantially and for the purposes set forth. Now, it is claimed on the part of the plaintiffs that this form of device used by Goodrich is an infringement, because it is said it is substantially this device of Rose's, (indicating,) and that the crease is formed in substantially the same way, and that the parts are adjustable in the same manner; that is to say, that the mechanism of the parts is the same, because, as I have said, that I consider an indispensable element in the true construction of the Rose patent. I do not so regard it. Limiting the Rose patent to the substantial form of mechanism which he

554 has described and the manner in which it operates and is at-

tached to the bed-plate of the sewing-machine and the needle-bar, I think there is a substantial difference, such a difference between these two devices as is within the true construction of the patent law; and to hold otherwise is to leave subsequent inventors within very narrow bounds in the same common field of discovery, and would, therefore, be attended with very serious consequences. If in any part of the mechanism of Fuller or of Rose there was some great novel principle or discovery which no one else could use without infringing that part, then it might be said that these cases of the defendants were fairly within its operation; but that would bring it within the principle, for example, of Howe's discovery in relation to the operation of the needle and of Wilson's feeding device. There is something connected with Howe's discovery which no one else can use without our saying at once that, no matter in how different a form we put it, still Howe's invention is there. So in relation to the feeding device of Wilson. No matter how much you may change it or modify it, still it is Wilson's feeding device. If that principle were applicable to these cases then I should have no hesitation in holding there was an infringement.

There are two modes of construing the patent law, and it may be said, perhaps without any disrespect, that there are some judges who adopt one mode and some another. There are those who are inclined to expand, beyond legitimate boundaries, the invention of the patentee. There are others who restrict it within somewhat narrow bounds, holding that the invention of the patentee must be limited by the particular mechanism and the application by which the result is attained, thus leaving the field of discovery open to all persons to explore it beyond the range of that particular mechanism and its application. I confess myself to be one of the latter class of judges, and hold that parties should be limited rather closely within the claims of their patent and the description of the particular mechanism and the application which they have made by which the result is produced. Of course a change of form will not change the principle.

A mechanical change does not prevent an infringement. In looking at Goodrich's device as I have said, it seems to me to be essentially different from the Rose patent, and therefore I hold that in that case, as in the others, there is no infringement. In these cases all the defendants, or Yentzer and Goodrich under whom these defendants are manufacturing, claim to be protected by patents duly issued. Of course if
555 those patents are for something which has been previously discovered and patented to other parties, the patent is no protection, but it is at least evidence of the view which the Patent-Office has taken of the rights of the defendants.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy of the opinion of Hon. Thomas Drummond, judge of said circuit court, in the cases mentioned in the caption, and before whom said causes were heard, as the same appears from the decision filed with the papers in said causes and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 2nd day of October, A. D. 1874, and of our Independence the 99th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

It is stipulated and agreed that the foregoing opinion, or any duplicate thereof, shall be a part of the record in the three cases named on the title-page hereof, on the appeal of said cases to the Supreme Court of the United States, as fully as though said opinion had been annexed to and transmitted with said record to the clerk of said court, and he is hereby authorized to annex and print said opinion as a part of the record accordingly in each of said cases.

C. C. BONNEY,
*Counsel for Complainants & Appellants.*
SCATES & WHITNEY,
*Solicitors for Respondents & Appellees.*

(Indorsement on cover:) No. 160. Henry W. Fuller and Isaac W. Barnum, appellants, vs. Enoch S. Yentzer and Walter Scates. N. Illinois C. C. U. S. Filed 15th October, 1874.

# Supreme Court,

OF THE UNITED STATES.

**HENRY W. FULLER, and ISAAC W. BARNUM,**

*Appellants,*

*vs.*

**HERMAN B. GOODRICH,**

**No. 162.**

# BRIEF for APPELLANTS

E. N. DICKERSON,
E. B. BARNUM,
*Of Counsel.*

NEW YORK:
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1877.

# In the Supreme Court of the United States

**No 162.**

HENRY W. FULLER, and ISAAC W. BARNUM
*Appellants,*
*vs.*
HERMAN B. GOODRICH,
*Appellee.*

*Appellants' Brief.*

This is the third of three cases brought by the appellants, the first and second of which are against Enoch S. Yentzer and Walter B. Scates.

These cases were tried together in the Court below, and the records in each of the cases having been stipulated into all where applicable (p. 70, fol. 293), the records certified here are substantially alike.

## STATEMENT OF THE CASE.

This suit is brought for the infringement of reissued Letters Patent No. 3,218, dated December 1, 1868, the original patent having been numbered 40,084, dated September 22, 1863, granted to James Willcox as assignee of Israel M. Rose.

The first, second, fifth, sixth and eighth claims of that patent are involved in this suit.

The state of the act at the time of the invention by Rose is set forth in the appellants' brief in case No. 161 with especial reference to the sixth claim.

For a discussion of the features covered by that claim the Court is respectfully referred to the said brief.

There is no serious pretence made by the appellee that this feature of unity of adjustment is not employed in his tuck creaser.

His witnesses testify :

Chapin, first at page 72, q. 22, says that the appellee's devices, Exhibits 13 and 14, do not embody the unity of adjustment, and at page 87 and q. 203, 204, 205 and 206, that they do.

Sherburne, at page 121, fol. 516, says that both Rose and Goodrich embody this feature, also at p. 96, q. 1.

Appellants witnesses testify :

Barnum, page 34, fol. 225, q. 1 and 2, that Exhibits 13 and 14 do embody it, as does Smith at p. 56, fol. 266.

The Court below is understood to have found it in the said Exhibits, but construing the claim so as to confine it to the precise mechanism of Rose, fails to find infringement.

The question of infringement in this case, therefore, so far as the sixth claim is concerned, depends entirely on the construction to be given it by the Court.

As throwing some light on this question in this case, reference is made to Chapin, Appellee's wit ness, that the advance made in the art by Rose was "he provided a complete unity of adjustment (to and from the needle) as a whole, and substituted pinching jaws for notch and point." He does not consider Wheeler, in making this answer, but as the Court below did not consider Wheeler, either it is fair to presume that there was no necessity for doing so in determining Rose's labors in advancing the art.

The first claim of the Rose patent is "the mechanism substantially such as herein described for forming a ridge or ridges on fabrics to be afterwards folded in the line of such ridges."

The second claim is, "the method of nipping or

pinching the fabric to form ridges or creases thereon as aforesaid, by means of jaws, opened and closed at intervals to seize and pinch the fabric when at rest, and then release it as the same is moved along intermittingly by a suitable mechanism as set forth."

For the purposes of discussion these two claims may be taken together.

Prior to this invention the only other method of making a crease in cloth was by means of the notch and point or their equivalents; and ever since, and now, the notch and point or blade and these pinching jaws furnish the only known methods of making a crease.

It is true, as asserted by the witness of the appellee, Sherburne, at pp. 121, 122, fol. 520, that Fuller's patent of June 5, 1860, shows jaws for pinching a crease in fabric; but there is a sufficient difference, at least in the operation of the jaws of Fuller & Rose to justify a subordinate patent for his method of pinching, especially in that he pinches from or upon the upper side of the cloth while Fuller pinches from both sides.

Barnum, p. 45, x-q. 16.
Smith, p. 57, x-q. 3.

It will be observed that Rose has placed his jaws in a vertical position, and so arranged that when they descend they are enabled, by the sharp or serrated edges provided, to seize the fabric themselves and fold and pinch it between them. The inside jaw, after reaching the cloth, becomes practically stationary, while the other jaw moves towards it carrying the fabric, and doubling it up as it approaches it.

Barnum, p. 33, fol. 223.
Smith, p. 54, fol. 264.
Chapin, p. 86, X-Q. 168, 169.

A small quantity of cloth is doubled up between

the opposing surfaces and compressed in this doubled condition as the surfaces meet.

Barnum, p. 33, fol. 223.
Chapin, p. 118, fol. 486, p. 86, X-Q. 163.

In the tuck creases, Exhibits 13 and 14, made by the appellee, is found a pair of jaws.

Chapin, p. 87, X-Q. 185 to 196.
Cubley, p. 92, X-Q. 1 to 5.
Barnum, p. 33, fol. 224.

That one jaw is stationary, while the other moves towards it.

Chapin, p. 118, fol. 490; p. 88, X-Q. 198, 199.

Sherburne, p. 121, fol. 511.
Barnum, p. 33, fol. 224.

A small portion of the cloth is doubled up between the opposing surfaces, and compressed in this doubled condition.

Barnum, p. 33, fol. 224.
Chapin, p. 118, fol. 490, p. 87, X-Q. 179 to 184; p. 89, X-Q. 201, 204 and 205.

In both Rose and Goodrich these jaws or opposing surfaces open and close at intervals, compress the cloth when the feed is at rest, and release it when the feed operates.

Chapin, p. 88, X-Q. 197, 200.

An effort has been made to show a difference by reason of the horizontal position of these jaws in the Goodrich tuck creaser.

The witness, Chapin, tries to draw a distinction between the movable jaw of Goodrich and that of Rose by describing the former as a hammer, and the crease as obtained by concussion. He is forced,

however, as shown to admit that the said jaws in both are levers, and that they make the crease in the same way.

Chapin, p. 87, x-q. 180.

The effect of placing the jaws in a horizontal position is to deprive them of the capacity of feeding themselves with cloth.

In other words, the jaws of Rose supply themselves with the cloth and double it before creasing, picking it up from the bed-plate, while the horizontal position necessitates the use of a device to pick up the cloth, double it and place it between the opposing surfaces of the jaws.

This in Exhibit 13 is accomplished by a sliding folder, so called, and in Exhibit 14 by a spur.

Neither of these parts perform any other office than that of supplying the jaws with material.

So far as the creasing is concerned it is clearly proved by the appellee's own witnesses that his creasers have jaws opened and closed at intervals under the conditions stated in the second claim, and that the mechanical part of his devices in their construction and operation so far as the creasing devices are concerned are identical with those described and claimed in the first two claims of the Rose patent.

The fifth claim is as follows:

"The combination of the creasing device or the devices of a tuck marker with a jointed lever substantially as and for the purposes set forth."

The presence of the jointed lever in combination with the creasing devices in the appellee's Exhibits 13 and 14, is obvious on inspection, and is admitted by his witnesses.

There is no pretence of want of novelty and the question of infringement becomes simply one of construction of claim.

In the Rose invention the jointed lever is combined with creasing devices composed of pinching jaws.

This is equally true of the appellee's creaser and it is difficult to conceive of any construction which would not include them within the claim.

The eighth claim is as follows :

"The combination with a tuck marker, having upper and upper and under parts connected and together, adjustable as specified, of the lever and spring substantially as and for the purpose set forth."

This combination is also apparent on inspection, and there is no proof of want of novelty.

As to some of the features of Rose their novelty is attacked by Wheeler.

The answer is found in the brief in case 160.

Some evidence was offered as to want of utility. Chapin p. 73, Q. 24, had tried a patent office model of Rose, and couldn't make it work, but presumes it might be adjusted to act, and thinks it of no value for want of gauge, p. 89, and X-Q. 209.

Sherburne says it would be *inoperative without a* guage, and of no practical value because the stationary jaw draws the cloth tightly over the tongue preventing the movable jaw from seizing the same, p. 97, and X-Q., which he qualifies in p. 121, fol. 518, by refering to heavy starched goods. He does not appear to have tried it ; and he is contradicted by Barnum, p. 45, and Q. 14, who testifies that it is practical.

## Error.

The Court below erred in holding that the Rose "must be confined to the *special mechanism* which he has invented, and which he attaches to the sewing machine."

It must be assumed that by this language the Court intended to confine the inventor to the exact forms, shapes, and sizes of the parts, and the precise arrangement of them for the following reasons:

Rose compressed or pinched the cloth between opposing surfaces or jaws, both employed on the same side of the cloth.

So does Goodrich.

Rose employs a stationary and a movable jaw.

So does Goodrich.

Rose operates his movable jaw by the needle arm.

So does Goodrich.

Rose employs a jointed lever to operate his movable jaw.

So does Goodrich.

Rose attaches his jointed lever to a standard attached to the lower plate.

So does Goodrich.

Rose lifts his jointed lever with a spring.

So does Goodrich.

Rose connects the upper and under parts of his device so that there is a unity of adjustment of the whole to and from the needle.

So does Goodrich.

But this is the whole of Goodrich's tuck creaser, except an additional device for presenting the cloth to the grasp of the jaws.

The gauge and cloth smoother are well known independent sewing machine attachments, and were applied to tuck creasers as a component part for convenience merely. They were used independently in connection with tuck creaser long before they were embodied with it.

There is absolutely nothing of value in the Goodrich creaser that is not found in Rose.

It is insisted that the narrowest construction that could fairly be given to the claims of the Rose patent would enable it to cover at least substantially identical mechanical parts.

But it is not pretended that any one invented this mode of creasing by jaws before Rose. He stands at the head of the art in this direction and his patent is entitled to a liberal construction, which shall give him the full benefit of his invention.

It is the very familiar case of the invention of a new mode of operation, (which in this case is the *pinching* of a short fold in the cloth) by means which are new in the application, but which *might* to be old in themselves; and the question is whether another can appropriate that new mode of operation by merely changing the forms and arrangements of the devices which carry it out. It may be said that pincers are not new in themselves; but it cannot be said, in view of the evidence, that cloth was ever creased by pincers operated automatically for that purpose; and it is elementary law that the inventor of the new mode of operation stands upon a different and far broader ground, than the inventor of new devices to carry out an old mode of operation.

This inventor has patented his devices also, and they are infringed, but if the devices were all old *per se*, the patent would yet be valid for their application to carry out a new mode of operation.

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